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New York (State) Laws, statutes, etc. Compilations

ANNOTATED^{cf} CONSOLIDATED LAWS

OF THE
STATE OF NEW YORK

AS AMENDED TO JANUARY 1, 1918

CONTAINING ALSO
THE FEDERAL AND STATE CONSTITUTIONS

WITH
NOTES OF BOARD OF STATUTORY CONSOLIDATION,
TABLES OF LAWS AND INDEX

EDITED BY
CLARENCE F. BIRDSEYE, ROBERT C. CUMMING
AND FRANK B. GILBERT

SECOND EDITION

EDITED BY
ROBERT C. CUMMING AND FRANK B. GILBERT

VOL. VII

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THE BANKS LAW PUBLISHING COMPANY
BAKER, VOORHIS & CO.

NEW YORK

MATTHEW BENDER & COMPANY
INCORPORATED

NEW YORK AND ALBANY, N. Y.

1918

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Office of the Secretary of State, }
State of New York, } ss.

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, as amended by chapter 594 of the Laws of 1895, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

L. S.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 31st day of July, 1917.

FRANCIS M. HUGO,
Secretary of State of the State of New York.

ANNOTATED CONSOLIDATED LAWS

OF THE

STATE OF NEW YORK

REAL PROPERTY LAW.

L. 1909, ch. 52.—“An act relating to real property, constituting chapter fifty of the consolidated laws.”

[In effect February 17, 1909.]

CHAPTER L OF THE CONSOLIDATED LAWS.

REAL PROPERTY LAW.

- Article 1. Short title; definitions (§§ 1, 2).
2. Tenure of real property (§§ 10-18).
3. Creation and division of estates (§§ 30-72).
4. Uses and trusts (§§ 90-117).
5. Powers (§§ 130-182).
6. Dower (§§ 190-207).
7. Landlord and tenant (§§ 220-232).
8. Conveyances and mortgages (§§ 240-275).
9. Recording instruments affecting real property (§§ 290-334).
10. Discharge of ancient mortgages (§§ 340-344).
11. Quieting title to real property (§§ 360-366).
12. Registering title to real property (§§ 370-435).
13. Cemetery lands (§§ 450, 451).
14. Laws repealed; construction; when to take effect (§§ 460-462).

ARTICLE I.

SHORT TITLE; DEFINITIONS.

- Section 1. Short title.
2. Definitions.

§ 1. Short title.—This chapter shall be known as the “Real Property Law.”

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 1.

Consolidators' note.—The matter relating to definitions and construction of chapter has been divided into two new sections and placed in its appropriate place in the chapter as §§ 2 and 461.

§ 2. **Definitions.**—The terms “real property” and “lands” as used in the first eight articles of this chapter are co-extensive in meaning with lands, tenements and hereditaments.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 1; originally revised from R. S., pt. 2, ch. 1, tit. 5, §§ 10, 11.

Consolidators' note.—The amendment proposed restores the usage of the Revised Statutes which confined the definition of this section to the matter contained in the first eight articles. Observe that art. 9 of this chapter (§ 240, new § 290) contains its own definitions, slightly at variance with that in § 2. Therefore the definition of § 2 is not, as it now stands, correct.

References.—General definition of real property, General Construction Law, § 40; term defined for purposes of taxation, Tax Law, § 2, subd. 3; term defined as used in article relating to recording instruments, Real Property Law, § 290. Defined in statute relative to descents, Decedent Estate Law, § 80.

Definitions compared.—Definition of real property as contained in this section and that contained in § 290, post, compared. *Mayor v. Mable* (1855), 13 N. Y. 151, 158.

Lands, tenements and hereditaments.—Hereditament is more comprehensive than either “land or tenement” and includes whatever may be inherited, corporeal or incorporeal. *Nellis v. Munson* (1888), 108 N. Y. 453, 459, 15 N. E. 739; *Canfield v. Ford* (1858), 28 Barb. 336; *Pelletreau v. Smith* (1859), 30 Barb. 494.

Real property includes all interests in land, whether in possession, reversion or remainder. *Floyd v. Carow* (1882), 88 N. Y. 560, 569.

Land includes not only the naked earth, but everything within it, and buildings, trees, fixtures, and fences upon it, etc. *Baker v. Johnson* (1942), 2 Hill 342; *Green v. Armstrong* (1845), 1 Denio 550; *Mott v. Palmer* (1848), 1 N. Y. 564.

Lands conveyed by metes and bounds include land under water as well as other land, if the land under water is within the bounds of the grant. *Rogers v. Jones* (1828), 1 Wend. 237.

Sand placed on land for storage and not for the improvement of the soil does not become realty. *Graham v. Purcell* (1908), 126 App. Div. 407, 110 N. Y. Supp. 813.

Growing trees, fruit and grass are part of the land and descend with it to the heir. *Warren v. Leland* (1848), 2 Barb. 613.

Trees standing upon the lands of a person belong to such person, and he is entitled to all its fruit notwithstanding some branches overhang the lands of another. *Hoffman v. Armstrong* (1872), 48 N. Y. 201.

Standing trees form a part of the land and as such are real property. *Goodyear v. Vosburgh* (1869), 57 Barb. 243; *Vorebeck v. Roe* (1867), 50 Barb. 302.

An owner of land adjoining a highway may have damages for cutting down a tree in the highway in front of his premises. *Edsall v. Howell* (1895), 86 Hun 424, 33 N. Y. Supp. 892.

A grant of growing trees to one who has no interest in the soil severs them and makes them personal property. *McIntyre v. Barnard* (1843), 1 Sandf. Ch. 52; *Lyon v. Wing* (1884), 20 Wk. Dig. 144; *Bank of Lansingburgh v. Cray* (1847), 1 Barb. 542.

Trees growing in a nursery planted by a tenant must be removed by him on the termination of his lease or title will vest in the owner of the reversion. *Brooks v. Galster* (1868), 51 Barb. 196. As between mortgagor and mortgagee trees grown in a nursery are covered by the mortgage, and those standing on the land when it is sold under a foreclosure, pass with the land to the purchaser. *Hamilton v. Austin* (1885), 36 Hun 138.

Growing grass partakes of the nature of realty and goes upon the death of the owner to the heir or devisee. *Matter of Chamberlain* (1894), 140 N. Y. 390, 35 N. E. 602.

Mines.—Coal in the earth and forming part of it is to be regarded as real property. *Genet v. D. & H. Canal Co.* (1895), 13 Misc. 409, 35 N. Y. Supp. 147, *revd.* on other grounds (1896), 1 App. Div. 631, 37 N. Y. Supp. 610.

Right to a pew is an interest in real estate. *McNabb v. Pond* (1856), 4 Bradf. 7; *First Baptist Church v. Bigelow* (1836), 16 Wend. 28, 31. It is right springing out of the land and has some of the qualities of realty. *Shaw v. Beveridge* (1842), 3 Hill 26; *First Baptist Church v. Witherell* (1832), 3 Paige 296; *Johnson v. Corbett* (1884), 11 Paige 265, 276, in which case a pew was not considered personal estate unless it was leased for a term of years. Kent classified pews among incorporeal hereditaments. 3 Kent's Com. 401 (14th Ed. 1896).

Leasehold interest in oil lands, character considered and effect of § 39 of the General Construction Law, stated. *Broman v. Young* (1885), 35 Hun 173.

A rent charge in fee is a hereditament, devisable, descendible and assignable like other incorporeal hereditaments. *Cruger v. McClaughry* (1868), 51 Barb. 642, *affd.* (1869), 41 N. Y. 219; see also *Carter v. Burr* (1862), 39 Barb. 59.

Term for years is not a tenement or a hereditament. *Mayor v. Mable* (1855), 13 N. Y. 151, 159. So held at common law. *People ex rel. Sears v. Westervelt* (1836), 17 Wend. 674, *affd.* (1838), 20 Wend. 416; see also *Despard v. Churchill* (1873), 53 N. Y. 192, 199; *Merry v. Hallet* (1824), 2 Cow. 497.

A tenant for years is not included in the phrase "any person claiming the real estate owned by him" as found in L. 1893, ch. 560, providing for damages caused by the grading of a street. *Matter of Ehrsam* (1899), 37 App. Div. 272, 55 N. Y. Supp. 942.

Chattel interests.—Real estate when applied to an interest in lands, includes all estates or interests therein which are held for life or some greater estate, but does not embrace terms for years and other chattel interests in land. *Westervelt v. People* (1838), 20 Wend. 416; *Jackson ex dem. Cary v. Parker* (1828), 9 Cow. 73; *Jackson ex dem. Gratz v. Catlin* (1807), 2 Johns. 248, *affd.* (1809), 8 Johns. 520. But chattels real are included in the definition of real property as used in § 290, *post.* *Ely v. Scofield* (1861), 35 Barb. 330.

Equitable interest in lands may be within the above definition. *Wright v. Douglass* (1849), 2 N. Y. 373, 376.

ARTICLE II.

TENURE OF REAL PROPERTY.

Section 10. Capacity to hold real property.

11. Capacity to transfer real property.
12. Deposition of resident alien. (Repealed.)
13. When and how alien may acquire and transfer real property. (Repealed.)
14. Effect of woman's marriage with alien. (Repealed.)
15. Title through alien.
16. Liabilities of alien holders of real property.
17. Heirs of patriotic Indian.
18. Mines in Saint Lawrence county.

§ 10. **Capacity to hold real property.**—1. A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

2. Alien friends are empowered to take, hold, transmit and dispose of real property within this state in the same manner as native-born citizens

and their heirs and devisees take in the same manner as citizens; provided, however, that nothing herein contained shall affect the rights of this state in any action or proceeding for escheat instituted before May nineteenth, eighteen hundred and ninety-seven. (*Amended by L. 1913, ch. 152.*)

Source.—Former Real. Prop. L. (L. 1896, ch. 547) § 2; originally revised from R. S., pt. 2, ch. 1, tit. 1, § 8. Subd. 2 is taken from L. 1897, ch. 593, § 1.

References.—Devises of real property to aliens are void, Decedent Estate Law, § 13, subject to the provisions of this section as amended by L. 1913, ch. 152. Devises to certain corporations regulated, Id. § 12. Property which may be devised, Id. § 11. Descent of real property upon death of owner, Id. §§ 80–101.

A citizen may be defined to be one who owes allegiance to the state and has the right of reciprocal protection from it. But “citizen,” “voter,” and “elector” are not synonymous. In re Rousos (1909), 119 N. Y. Supp. 34.

Determination as to who are citizens.—In the absence of federal statute, the common law, as it existed at the time of the adoption of the Federal Constitution, is to determine who are citizens of the United States. *Ludlam v. Ludlam* (1863), 26 N. Y. 356.

Prima facie proof of naturalization.—Proof that a person came in 1865 from Ireland to the State of New York, lived there until his death in 1899, participated in state and national elections, and held a liquor tax certificate when he died, is *prima facie* sufficient to show that he was a citizen when his wife died in 1898, and hence that he could take land from her by devise. *Fay v. Taylor* (1900), 31 Misc. 32, 63 N. Y. Supp. 572.

Laws of foreign countries, granting similar privileges as to taking, acquiring and holding lands must be proven. *Douglass v. Douglass* (1911), 70 Misc. 412, 128 N. Y. Supp. 912.

Aliens; construction and application.—The provision of this section with reference to the capacity of an alien to take property was intended to embrace the right to transmit lands by inheritance, although such right is not expressly mentioned. *Haley v. Sheridan* (1905), 107 App. Div. 17, 94 N. Y. Supp. 864.

The privileges conferred by this provision are matters of comity and in no way dependent upon the intention of the alien; the privileges are without restriction or forfeiture, and the title will have nothing added to it if the alien subsequently becomes a citizen. So, such an alien may acquire property by devise or descent, and if he become seized of realty within this state, and if he do not convey or devise the same, at his death, it will pass by descent as if he were a citizen. *Haley v. Sheridan* (1907), 190 N. Y. 331, 83 N. E. 296, affg. (1906), 114 App. Div. 903, 100 N. Y. Supp. 1119.

An alien is, in general, incapable of taking or transmitting an estate in lands by descent. *People v. Conklin* (1841), 2 Hill 67. And alien heirs of a citizen cannot take or hold real property except upon compliance with statute. *McCarty v. Terry* (1872), 7 Lans. 236.

Where some of the persons who might inherit are aliens, their shares do not escheat to the state, but are disregarded and the entire estate goes to those heirs at law who are citizens. *Douglass v. Douglass* (1911), 70 Misc. 412, 128 N. Y. Supp. 912.

Children of naturalized citizens become, by the naturalization of their parents, citizens of the United States. *People v. Newell* (1885), 38 Hun 78.

A child born in this state of alien parents during their temporary sojourn is a citizen of the United States. *Lynch v. Clarke* (1844), 1 Sandf. Ch. 583, 645.

The daughter of a person who became a citizen of the United States at the time of the Declaration of Independence is not an alien. *Peck v. Young* (1841), 26 Wend. 613, writ of error dis. (1842), 1 How. 250, 11 L. ed. 120.

Woman who marries citizen.—Under the United States' statutes, act 1855, to the

effect that a woman might be lawfully naturalized who marries a citizen of the United States, and shall be deemed a citizen, it was held that any woman possessing the capacity, such as race and blood, may become naturalized by marriage with an American citizen, and be invested with his citizenship. *Halsey v. Beer* (1889), 52 Hun 366, 5 N. Y. Supp. 334.

An alien female who intermarries with a citizen becomes a citizen by virtue of the marriage, and is capable of taking and holding lands by purchase or descent. *Luhrs v. Elmer* (1880), 80 N. Y. 171; see also *Wainwright v. Low* (1892), 132 N. Y. 313, 30 N. E. 747.

Dower.—The alien widow of a naturalized citizen, although never residing in this state, is entitled to dower. *Burton v. Burton* (1864), 1 Keyes 359.

Corporation may take and hold real property, but not beyond its corporate purpose; a railroad cannot take lands for an extension which is not authorized. *Pres. of Union Bridge Co. v. Troy & Lansingburgh R. R. Co.* (1872), 7 Lans. 240. Section 1 of art. 14 of the amendments to the United States' Constitution does not declare corporations to be citizens. *DuQuesne Club v. Penn. Bank of Pittsburgh* (1885), 35 Hun 390.

Alien beneficiaries.—A citizen of the United States may create a trust for the benefit of children who are subjects of Great Britain, and may appoint British subjects as trustees. *Hayden v. Sugden* (1905), 48 Misc. 108, 96 N. Y. Supp. 681.

§ 11. Capacity to transfer real property.—A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 3; originally revised from R. S., pt. 2, ch. 1, tit. 1, § 10.

References.—Power of married women to transfer real property. Domestic Relations Law, §§ 50, 51. Power of corporations, generally, to convey real property, General Corporation Law, § 11. Mortgage, sale or lease of real property by corporations, *Id.* §§ 70–76. Proceedings for the sale, lease or mortgage of real property of incompetent persons, Code Civil Procedure §§ 2348–2364; of real property of infant, *Id.* §§ 2345–2364.

Seisin means ownership. *Matter of Dodge* (1887), 105 N. Y. 585, 591, 12 N. E. 759; *Van Rensselaer v. Poucher* (1847), 5 Denio 35.

Married women.—As to effect of section upon common law disability of married women to convey lands, see *Albany Fire Ins. Co. v. Bay* (1850), 4 N. Y. 2, 15.

Infants.—A deed of lands by an infant is voidable only. *Gillett v. Stanley* (1841), 1 Hill 121; *Eagle Fire Co. v. Lent* (1837), 6 Paige 635; *Boal v. Mix* (1837), 17 Wend. 119; *Stafford v. Roof* (1827), 9 Cow. 626. And something must be done to disaffirm it after he arrives at age. *Wetmore v. Kissam* (1858), 16 N. Y. Super. (3 Bosw.) 321, 327.

A deed executed by an infant will not operate to divest him of his title and is properly excluded when offered in evidence by a defendant in ejectment. *Clapp v. Byrnes* (1898), 155 N. Y. 535, 50 N. E. 277.

An infant will not be permitted upon becoming of age to receive the property bargained for, use it, and then repudiate any obligation to pay for it. *Kincaid v. Kincaid* (1895), 85 Hun 141, 32 N. Y. Supp. 476, *affd.* (1899), 157 N. Y. 715, 53 N. E. 1126.

The infant's retention of the proceeds of the sale after he becomes of age is not such an affirmation of the contract as to render valid against him an obligation given by him as a consideration for the land. *Walsh v. Powers* (1870), 43 N. Y. 23; compare *Kitchen v. Lee* (1844), 11 Paige 107.

Acquiescence as ratification.—A minor daughter deeded to her father property which he occupied as a homestead, until he died long after the minor reached her majority. The father, with the daughter's knowledge kept the premises in repair,

and she never asserted her ownership during the father's lifetime. After the father's death and within the period of limitation, the daughter gave notice of disaffirmance of her conveyance, and brought action to recover her interest. It was held that the facts were not sufficient to show affirmance and did not bar recovery. *Eagan v. Scully* (1898), 29 App. Div. 617, 51 N. Y. Supp. 680, *affd.* 173 N. Y. 581, 65 N. E. 1116. Delay of nineteen years in disaffirming conveyance constitutes ratification. *Aldrich v. Funk* (1888), 48 Hun 367, 1 N. Y. Supp. 541.

An infant executed a deed of trust for his benefit. For a year after attaining full age he received the interest from the trustee in ignorance of his right to disaffirm the deed, but he accepted no income to which he was not entitled, regardless of the deed. It was held not to show a ratification of the deed after attaining full age. *Pedro v. Pedro* (1911), 71 Misc. 296, 127 N. Y. Supp. 997.

Where consideration of deed was nominal, infant does not ratify it by acquiescing in it for period of fourteen months after he comes of age. *O'Rourke v. Hall* (1899), 38 App. Div. 534, 56 N. Y. Supp. 471.

An infant may disaffirm his deed after he arrives at age without restoring the consideration; mere acquiescence for three years after arrival at full age is not a ratification. *Green v. Green* (1877), 69 N. Y. 553.

A mortgage by an infant is not rendered valid because the money secured by the mortgage was used for the improvement of the mortgaged premises. *New York Bldg. Loan & Banking Co. v. Fisher* (1897), 23 App. Div. 363, 48 N. Y. Supp. 152.

A mortgage given by an infant is ratified where, after attaining majority, the mortgagor procures releases of portions of the mortgaged premises and takes no steps to disaffirm until foreclosure is begun, more than two years after her becoming of age. *Wilson v. Danagh* (1889), 55 Hun 605, 7 N. Y. Supp. 810.

Where a father gave to his infant daughter a mortgage on certain land, and then, while she was still an infant, induced her to release it, in consideration of an interest in other land, she was entitled to disaffirm the release on becoming of age. *Foy v. Salzano* (1912), 152 App. Div. 47, 136 N. Y. Supp. 699.

A mortgagor who executed his mortgage during infancy can disaffirm it on coming of age without returning the money received thereunder, if he spent the money before reaching his majority. *Kane v. Kane* (1897), 13 App. Div. 544, 43 N. Y. Supp. 662.

Adverse possession by infant.—Disability of infancy does not interrupt the running of the statute regulating the acquisition of title by adverse possession. *Gregan v. Buchanan* (1896), 15 Misc. 580, 37 N. Y. Supp. 83. See as to effect of § 375, Code Civ. Pro., *Messinger v. Foster* (1906), 115 App. Div. 689, 101 N. Y. Supp. 387.

Deeds of a lunatic; when voidable.—A deed executed by a lunatic before inquisition found is not void but voidable. *Wamsley v. Darragh* (1895), 12 Misc. 199, 33 N. Y. Supp. 274, *affd.* (1895), 14 Misc. 566, 35 N. Y. Supp. 1075; *Jackson ex dem. Merritt v. Gumaer* (1824), 2 Cow. 552; *Stuckey v. Mathes* (1881), 24 Hun 416. Until inquisition found the deed of a lunatic is not void but voidable, and a purchaser in good faith and for full value may maintain ejectment against strangers to the title in possession. *Baldwin v. Golde* (1895), 88 Hun 115, 34 N. Y. Supp. 587; *Shea v. Campbell* (1910), 71 Misc. 222, 128 N. Y. Supp. 508.

Deeds of person of unsound mind who has not been judicially declared incompetent is voidable and not absolutely void. *Smith v. Ryan* (1908), 191 N. Y. 452, 84 N. E. 402.

The deed of an insane person is not absolutely void, but voidable, at his election, on recovery of his reason, and has full force and effect until his option to declare it void, is exercised. *Blinn v. Schwarz*, 177 N. Y. 252, 69 N. E. 542, 101 Am. St. Rep. 806.

Presumption of sanity.—The deed of an alleged insane person will be presumed

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to have been executed when such person was sane. *Stewart v. Lispenard* (1841), 26 Wend. 255, 297.

When void.—A deed by one who has been judicially declared to be a lunatic is absolutely void. *Brown v. Miles* (1891), 61 Hun 453, 16 N. Y. Supp. 251. After a person has been judicially declared a lunatic a conveyance by him is absolutely void and the presumption of the continuance of lunacy is conclusive until the inquisition has been superseded. *Sander v. Savage* (1902), 75 App. Div. 333, 78 N. Y. Supp. 189; same effect is *Goodyear v. Adams* (1889), 1 Silv. 185, 5 N. Y. Supp. 275, *affd.* (1890), 119 N. Y. 650, 23 N. E. 1149; *Aldrich v. Bailey* (1890), 28 N. Y. St. Rep. 571, 8 N. Y. Supp. 435, *revd. on other grounds* (1892), 132 N. Y. 85, 30 N. E. 264; *Johnson v. Stone* (1885), 35 Hun 380, 383.

A deed of a person of unsound mind is void when the fact of unsoundness is established, no matter how formal the execution of the instrument might have been. *Valentine v. Lunt* (1889), 115 N. Y. 496, 22 N. E. 209.

A conveyance of property at less than one-tenth its value, procured from a lunatic totally incapable of understanding the transaction, by a person knowing of lunacy and taking advantage of it to obtain the property is void. The act of acquiring property from a lunatic, incapable of understanding the transaction, by one taking advantage of the lunacy, is tortious. *Sander v. Savage* (1902), 75 App. Div. 333, 78 N. Y. Supp. 189. See also *Goodyear v. Adams* (1889), 52 Hun 612, 5 N. Y. Supp. 275, *affd.* 119 N. Y. 650, 23 N. E. 1149.

If the deeds were executed within the period covered by the finding of the jury they are not absolutely void, but are presumed to be so, until capacity to contract is shown by satisfactory evidence. *Hughes v. Jones* (1889), 116 N. Y. 67, 22 N. E. 446, 5 L. R. A. 632; compare *Van Deusen v. Sweet* (1873), 51 N. Y. 378, in which case it was held that where the facts show that the grantor was *non compos mentis*, the deed was void. See also *Brown v. Miles* (1891), 61 Hun 453, 60 N. Y. Supp. 251; *Booth v. Fuller* (1898), 35 App. Div. 117, 54 N. Y. Supp. 670.

When set aside.—A court of equity will not set aside and declare void the deed of a lunatic as a matter of course; it does so only upon equitable terms. *Canfield v. Fairbanks* (1872), 63 Barb. 461.

Where a conveyance made by a person of weak mind fairly represents the wishes of the grantor it was held that it would be sustained after his death, although it might have been set aside by the grantor in his lifetime. *Nutting v. Pell* (1896), 11 App. Div. 55, 42 N. Y. Supp. 987.

Restraint of transfer imposed in grant of fee simple is void. *De Peyster v. Michael* (1852), 6 N. Y. 467, 492.

Section of revised statutes cited.—*Clarke v. Hughes* (1852), 13 Barb. 147, 152.

§ 12. Deposition of resident alien.—(*Repealed by L. 1913, ch. 152.*)

In general.—Statutes relative to acquiring, holding and conveying of real property by aliens reviewed. *Haley v. Sheridan* (1907), 190 N. Y. 331, 83 N. E. 296, *affg.* (1906), 114 App. Div. 903, 100 N. Y. Supp. 1119.

A deposition made by an alien residing in any part of the United States who has declared his intention of becoming a citizen and who is and intends to remain a resident of the United States may be filed. *Rept. of Atty. Genl.* (1907) 280.

Effect of filing deposition.—Upon filing the deposition a resident alien may take and hold lands by descent and devise. *Wright v. Saddler* (1859), 20 N. Y. 320.

Effect of failure to file.—The title to a resident alien is good as against all, except the state, without filing the deposition. *Goodrich v. Russell* (1870), 42 N. Y. 177; *Renner v. Muller* (1879), 57 How. Pr. 229; *Stamm v. Bostwick* (1890), 122 N. Y. 48, 25 N. E. 233, 9 L. R. A. 597; *Matter of Leeffe* (1844), 4 Edw. Ch. 395; *In re Powers* (1884), 6 Civ. Pro. 326; *Nolan v. Command* (1886), 11 Civ. Pro. 295. The provision of the act of 1875 that an alien must declare his intention to become

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a citizen in order to "hold" land as against the state, is available only to the state; as against the rest of the world the title vests in the alien without precedent or subsequent condition, and as against the state the alien may hold until the escheat is declared. *Smith v. Smith* (1902), 70 App. Div. 286, 74 N. Y. Supp. 967.

A failure to file the declaration required of an alien renders his title liable to forfeiture during life by the state in proceedings to be taken for that purpose. The fact that the state failed in his lifetime to take proceedings, did not constitute a waiver and permit a transfer by inheritance to a citizen heir. The death of an alien without having filed such declaration works an immediate escheat to the state, without proceedings on its part having been taken, and therefore in the absence of legislation the title of a citizen heir of such alien cannot be sustained as against the state. *McCormack v. Coddington* (1906), 184 N. Y. 467, 77 N. E. 979, revg. (1905), 109 App. Div. 741, 96 N. Y. Supp. 571. See also *Stappenbeck v. Mather* (1911), 73 Misc. 434, 133 N. Y. Supp. 482.

The defeasible title by resident aliens is good, except as against the state. Their alienage is a cause of forfeiture which may be established by a judicial proceeding instituted on behalf of the state for that purpose. *Maynard v. Maynard* (1885), 36 Hun 227.

Devisees in remainder, though aliens, can take and hold as against the heir and all others except the state. *People v. Conklin* (1841), 2 Hill 67.

A resident alien devisee of a citizen takes, upon acceptance of the devise, a conditional title, absolutely as against the heirs of the testator but defeasible by the state until he complies with the provisions of the statute relating to a deposition. *Hall v. Hall* (1880), 81 N. Y. 130.

The alien heirs of a citizen cannot, except upon compliance with statutory conditions, inherit lands situated in this state. *McCarty v. Terry* (1872), 7 Lans. 236.

Defense of alienism not permitted in an action for specific performance because purchasers may make themselves capable to take real property by filing a deposition under this section. *Scott v. Thorpe* (1832), 1 Ed. Ch. 512.

§ 13. When and how alien may acquire and transfer real property.—
(*Repealed by L. 1913, ch. 152.*)

Effect of former statute considered. *Renner v. Muller* (1879), 57 How. Pr. 229. All of the cases referred to and considered under this section were decided prior to the repeal of the section by the act of 1913 and the power conferred upon friendly aliens to take hold and convey real property.

By the common law an alien could take real estate by devise although he could not hold it as against the state. *Wadsworth v. Wadsworth* (1855), 12 N. Y. 376.

The state alone, according to the common-law rule could question the right of an alien to hold land. *Belden v. Wilkinson* (1901), 33 Misc. 659, 68 N. Y. Supp. 205.

The brother of a citizen who had been naturalized was entitled, under the law as it existed prior to the revised statutes, to take in preference to a nephew who had also been naturalized, but whose father died an alien. *Jackson ex dem. Fitz Simmons v. Fitz Simmons* (1832), 10 Wend. 9.

Under the Revised Statutes the alien brothers and sisters of a deceased citizen could not take the estate of their brother by inheritance. *Kennedy v. Wood* (1838), 20 Wend. 230. It was held that the Revised Statutes did not abolish the common-law right of an alien to take by devise. *Matter of Lee* (1844), 4 Edw. Ch. 395. Section 17 of R. S., pt. 2, ch. 1, tit. 1, restricted the operation of a deposition to lands acquired after it was filed, and left the common law in force as to lands previously acquired. *Wright v. Saddler* (1859), 20 N. Y. 320.

Under the act of 1845, ch. 115, a resident alien could take upon complying with the provisions of that act, although his grantor or deviser had never filed a deposition. *Dusenberry v. Dawson* (1877), 9 Hun 511. The policy of the act of 1845 was much more liberal to aliens than that of previous statutes. *Goodrich v. Russell* (1870), 42 N. Y. 177. The said act materially modified the provisions of the Revised Statutes. *Hall v. Hall* (1880), 81 N. Y. 130. Nonresident alien heirs were entitled to take by descent under the act of 1845. *Kilfoy v. Powers* (1884), 3 Dem. 198; see also *Luhrs v. Eimer* (1880), 80 N. Y. 171.

The children of a resident alien succeed to his real estate as heirs although they are themselves nonresident aliens; the title of such of them as are males of full age being defeasible by the state unless deposition was filed. *Goodrich v. Russell* (1870), 42 N. Y. 177.

Under the act of 1845, as amended, all persons answering the description of heirs of a deceased resident alien, and who are of his blood, were made capable of taking and holding real property owned by him at the time of his decease, as heirs, whether they were citizens or aliens in the same manner as if they were citizens of the United States. Alien heirs who were minors took an indefeasible estate in the land under this act; such as were over the age of 21 years took a title defeasible by the state; until forfeiture declared by the state alien heirs were entitled to hold and enjoy the lands. *Maynard v. Maynard* (1885), 36 Hun 227.

The act of 1845 did not operate to confirm a title previously conveyed by an alien heir of one holding real estate. *Brown v. Sprague* (1848), 5 Den. 545. The act of 1845, ch. 115, only applied to the heirs of a deceased alien who resided within the state; the act did not remove the incapacity of alien heirs of naturalized citizens. *Luhrs v. Eimer* (1880), 80 N. Y. 171. Effect of act of 1845, see *Wainwright v. Low* (1892), 132 N. Y. 313, 30 N. E. 747; *Smith v. Reilly* (1900), 31 Misc. 701, 66 N. Y. Supp. 40.

The act of April 2, 1798, legalizing conveyances to aliens was held to authorize the alien heirs and devisees of the grantee to hold the lands conveyed, until by inheritance, devise or grant, the title came to a citizen. *Duke of Cumberland v. Graves* (1852), 7 N. Y. 305.

L. 1874, ch. 261 and L. 1875, ch. 38 entitled nonresident aliens to inherit as if they were then residents of the United States, and these statutes include within their effect the heirs of those who had died before as well as after their enactment. *Kelly v. Pratt* (1903), 41 Misc. 31, 83 N. Y. Supp. 636.

Under L. 1875, ch. 38, a nonresident alien, related by blood to a naturalized citizen of the United States, could take by devise from such citizen land situated in the state of New York. *Smith v. Smith* (1902), 70 App. Div. 286, 74 N. Y. Supp. 967.

Naturalization has no retroactive operation under the laws of United States, to vest or confirm in the citizen the title to lands which by reason of his alienage he cannot inherit at the time of the death of the ancestor. *Heney v. Brooklyn Benevolent Society* (1868), 39 N. Y. 333, 338.

The capacity of an alien to take real property by descent must exist at the time when the descent occurs, and the statutes in force at that time measure all his rights in this respect. The above section of the Real Property Law can have no retroactive effect, and such section and ch. 207 of the Laws of 1893, from which such section was in part derived, cannot be invoked in determining the status of an alien in his capacity to take real property by descent, where such descent occurred prior to the enactment of either of such statutes. *Stewart v. Russell* (1904), 91 App. Div. 310, 86 N. Y. Supp. 625, *affd.* (1906), 184 N. Y. 601, 77 N. E. 983.

Transfer of property by alien.—A woman who came from Ireland to America when an infant, whose father was never naturalized, may legally dispose of her property by deed, England conferring similar privileges on citizens of the United States. Rept. of Atty. Genl. (1908) 526.

Descent to aliens.—There can be no presumption in favor of the right of an alien to take by descent. If the only heir of a citizen is an alien the land will escheat to the people without any inquest of office found. *Ettenheimer v. Hefferman* (1873), 66 Barb. 374. Under the act of 1802, lands descended to the heirs of aliens although such heirs were aliens; if an alien died without heirs, the lands escheated. *Jackson ex dem. Smith v. Adams* (1831), 7 Wend. 367.

Real estate of which an intestate died seized descends to resident heirs to the exclusion of alien heirs. A resident heir may inherit, although he is required to trace his right through two nonresident alien ancestors. *Callahan v. O'Brien* (1893), 72 Hun 216, 25 N. Y. Supp. 410.

The statute gives the right of transmission by descent only to resident aliens and naturalized or native citizens; this right attaches only to land acquired by purchase; the statute contemplates only one step of transmission to alien heirs. *Branagh v. Smith* (1891), 46 Fed. 517.

Devises to aliens, see *People v. Conklin* (1841), 2 Hill 67; *Parker v. Linden* (1889), 113 N. Y. 28, 20 N. E. 858, 861.

Trusts for aliens.—If an alien has no interest in or control over the land itself, but only a right to its proceeds, there can be no forfeiture on the ground of alienage. *Ludlow v. Van Ness* (1861), 21 N. Y. Super. (8 Bosw.) 178. The fact that a beneficiary under a trust is an alien does not incapacitate him from receiving the income. *Marx v. McGlynn* (1882), 88 N. Y. 358, 376. A conveyance of land to a citizen as a trustee upon an express trust to sell and pay the proceeds to an alien, is a valid trust. *Anstice v. Brown* (1837), 6 Paige 448.

Where an alien for the purpose of evading the statute purchases land and takes a conveyance in the name of a third person, a resulting trust will not arise in favor of the alien. *Leggett v. Dubois* (1835), 5 Paige 114.

A direction in a will that money be laid out in land to be conveyed to or for the benefit of an alien is unlawful. *Beekman v. Bonsor* (1861), 23 N. Y. 298, 316.

Adverse possession by aliens.—When citizens permit aliens to hold their lands adversely for twenty years they should be barred from recovering them in the same manner that they are when they permit citizens to hold them adversely for a like period. *Overing v. Russell* (1860), 32 Barb. 263.

Dower.—An alien widow of a naturalized citizen of the United States, although she never resided within the United States during the lifetime of her husband, is entitled to dower. *Burton v. Burton* (1864), 1 Abb. Ct. of App. 271. *Forgey v. Sutliff* (1825), 5 Cow. 713. Compare *Mick v. Mick* (1833), 10 Wend. 379.

Alien widow who was an inhabitant of the state at the passage of the act of 1802, enabling aliens to purchase and hold real property, was not entitled to dower in her husband's lands, where said lands were acquired by her husband, and the marriage took place previous to the passage of the act. *Priest v. Cummings* (1838), 20 Wend. 338, revg. (1837), 16 Wend. 617.

An alien widow of a resident alien who had acquired the right to hold real property under the statute, was held not entitled to dower. *Connolly v. Smith* (1839), 21 Wend. 59. An alien widow of a natural born or naturalized citizen was held incapable of taking dower under the law as it existed in 1838. *Currin v. Finn* (1846), 3 Den. 229.

Mortgages on lands escheated.—The state takes title to escheated lands subject to a mortgage. But since the state cannot be sued without its consent its title is not divested by a sale in an action foreclosure. *Seitz v. Messerschmitt* (1907), 117 App. Div. 401, 102 N. Y. Supp. 732, affd. (1907), 188 N. Y. 587, 81 N. E. 1175.

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Effect of foreclosure.—Where foreign heirs are not made parties in foreclosure the title acquired is not good as against the estate. The interest of such heirs escheats unless they make the declaration required by this section, and the title of the estate is not affected by foreclosure. *Lowenfeld v. Ditchett* (1906), 114 App. Div. 56, 99 N. Y. Supp. 724.

§ 14. **Effect of woman's marriage with alien.**—(*Repealed by L. 1913, ch. 152.*)

A devise to children of a woman who was a citizen of the United States, but married to an alien, is valid. *McGillis v. McGillis* (1898), 154 N. Y. 532, 49 N. E. 145.

Section cited.—*Haley v. Sheridan* (1907), 190 N. Y. 331, 83 N. E. 296, affg. (1906), 114 App. Div. 903, 100 N. Y. Supp. 1119.

§ 15. **Title through alien.**—The right, title or interest in or to real property in this state now held or hereafter acquired by any person entitled to hold the same can not be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 7; originally revised from R. S., pt. 2, ch. 1, tit. 1, § 9; L. 1802, ch. 49, § 3; L. 1807, ch. 123, § 2; L. 1845, ch. 115, § 9; L. 1857, ch. 576, § 1; L. 1868, ch. 513, § 1; L. 1872, ch. 141; L. 1872, ch. 358; L. 1875, ch. 336; L. 1877, ch. 111.

Consolidators' note.—The section should be made more clearly futuritive in operation, as was originally intended by the revisers.

Reference.—Alienism of ancestor does not preclude inheritance, Decedent Estate Law, § 95.

At common law alienism was an impediment to taking lands by descent only when it came between the stock of descent and the person claiming to take; if some of the heirs were incapable of taking by alienage they were disregarded and the whole title vested in the heirs competent to take, provided they were not compelled to trace the inheritance from an alien. *Luhrs v. Elmer* (1880), 80 N. Y. 171.

Effect of former statute.—The former statute did not enable a person to take an estate by inheritance who deduced title by descent through a living alien relative of the deceased, who would himself inherit the estate were he a citizen. *McLean v. Swanton* (1856), 13 N. Y. 535. Former statute not to be construed so as to enable a person to deduce through an alien ancestor still living. *People v. Irvin* (1839), 21 Wend. 128.

Naturalization of husband of nonresident.—Where a citizen of the United States dies intestate in this state seized of lands therein acquired by devise from her mother, leaving as her heirs-at-law an aunt and uncle on her mother's side and three cousins, heirs-at-law of a deceased uncle, the share of the uncle who died a nonresident alien does not descend to his daughter although, by the naturalization of her husband, she had become an American citizen before her father's death, but the title thereto vested at once in the People of the State of New York. *Haley v. Sheridan* (1905) 46 Misc. 506, 95 N. Y. Supp. 42, mod. (1905) 107 App. Div. 17, 94 N. Y. Supp. 864.

§ 16. **Liabilities of alien holders of real property.**—Every alien hold-

ing real property in this state is subject to duties, assessments, taxes and burdens as if he were a citizen of the state.

§ 17. **Heirs of patriotic Indian.**—The heirs of an Indian to whom real property was granted for military services rendered during the war of the Revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of this ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor indorsed thereupon.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 8; originally revised from R. S., pt. 2, ch. 1, tit. 1, § 20; L. 1845, ch. 115, § 112.

§ 18. **Mines in Saint Lawrence county.**—The proprietors of any mines or veins of lead or copper in the county of Saint Lawrence, may demise, lease, or rent the same for a period not to exceed twenty-one years from the date of any such lease, to any foreign individual or company, and such lessee may take, hold, work, use or convey the same during the said term, in the same manner and subject to the same liabilities as if such lessee were a natural born citizen.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 9; originally revised from R. S., pt. 2, ch. 1, tit. 1, § 13.

See *Jackson ex dem. Gillet v. Brown* (1818), 15 Johns. 264.

ARTICLE III.

CREATION AND DIVISION OF ESTATES.

Section 30. Enumeration of estates.

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§ 30. Enumeration of estates.—Estates in real property are divided into estates of inheritance, estates for life, estates for years, estates at will, and by sufferance.

Source.—L. 1855, ch. 17.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 20; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 1.

Estates of inheritance include hereditaments; perpetual easement to carry water through a pipe across the lands of another is included in such term. *Nellis v. Munson* (1888), 108 N. Y. 453, 15 N. E. 739.

Estate for years.—At common law an estate for years was personal estate and by our statute goes to executors and administrators. The seisin of the freehold remains in the lessor and the possession of the lessee is that of the owner of the freehold. But by the statute the lessee takes an interest treated by designation and for some purposes as an estate in land. An action in ejectment may be maintained by the lessee to recover his term. *Crooked Lake Nav. Co. v. Keuka Nav. Co.* (1885), 37 Hun 9, 14; see also *Gardner v. Keteltas* (1842), 3 Hill 330, 332; *Whitney v. Allaire* (1848), 1 N. Y. 311.

Estates for years are denominated estates in lands; nevertheless they go to personal representatives as assets. *Despard v. Churchill* (1873), 53 N. Y. 192, 199. An estate for years, although denominated an estate in lands, is nevertheless a chattel real and does not fall by descent in the same manner as real property. *Bennett v. Crain* (1886), 41 Hun 183, 186.

A demise at an annual rent for the term of one year and an indefinite period thereafter, creates an estate for years. *Pugsley v. Aikin*, 11 N. Y. 494, 498 (1854). An easement in a right way may be the subject of an estate for years. *Robert v. Thompson* (1896), 16 Misc. 638, 40 N. Y. Supp. 754.

Estates for long terms of years, as for a hundred years or a thousand years, are of greater value than estates for life and have some of the characteristics of estates by inheritance. *Averill v. Taylor* (1853), 8 N. Y. 44, 52. A tenant under a lease for a term of 990 years is taxable as the owner of real property. *Trustees of Elmira v. Dunn* (1856), 22 Barb. 402.

The owner of an estate for years may redeem it from a prior incumbrance. *Burr v. Stenton* (1871), 43 N. Y. 462, 465.

Estates at will.—A tenant in possession under a void parol lease is a tenant at will, where he paid no rent nor promised to pay any while in possession. *Talamo v. Spitzmiller* (1890), 120 N. Y. 37, 23 N. E. 980, 8 L. R. A. 221; *Unglish v. Marvin* (1891), 128 N. Y. 380, 28 N. E. 634. It is otherwise where the tenant remains in possession under a parol lease for a term of years, an annual rental being reserved for a period of more than one year. *Coudert v. Cohn* (1890), 118 N. Y. 309, 23 N. E. 298, 7 L. R. A. 69.

Where a lease is disaffirmed by the parties after a tenant takes possession, the tenancy becomes one at will. *Altschuler v. Lipschitz* (1909), 113 N. Y. Supp. 1058.

Where one goes into possession of land under an invalid lease, his tenancy at its inception is a tenancy at will; but, by paying a monthly rent, he then becomes a tenant from month to month. *Israelson v. Wollenberg* (1909), 63 Misc. 293, 116 N. Y. Supp. 626.

A person, occupying land within the meaning of L. 1855, ch. 427, § 68, requiring the grantee of land under a tax deed from the State Comptroller to serve a written notice on any person occupying the land within two years from the expiration of the time to redeem, is a tenant at will. *Matter of Rourke v. Metz* (1910), 139 App. Div. 155, 123 N. Y. Supp. 720, *affd.* (1911), 202 N. Y. 604, 96 N. E. 1129.

An intending purchaser who enters into possession under an invalid contract is merely a tenant at will. *Burrows v. Fischer* (1911), 71 Misc. 168, 129 N. Y. Supp. 902.

Tenants, under a lease requiring written notice of an intention to renew, who hold over without giving the notice are tenants at will. *Oumpaugh v. Engel* (1907), 121 App. Div. 9, 105 N. Y. Supp. 510.

A person who enters upon land by permission of the owner without any term being prescribed or rent reserved, is a tenant at will. *Larned v. Hudson* (1875), 60 N. Y. 102; *Sarsfield v. Healy* (1867), 50 Barb. 245.

A demise to a tenant for and during the will and pleasure of the landlord creates an estate at will. *Post v. Post* (1852), 14 Barb. 253.

Estates by sufferance.—At common law a tenant who held over after the expiration of his term, became a tenant by sufferance. He had only a naked possession, and no estate which he could transfer or transmit. He stood in no privity to his landlord and was not liable to pay any rent. He was held by the laches of the landlord, who could enter and put an end to the tenancy when he pleased. *Smith v. Littlefield* (1873), 51 N. Y. 539.

A tenancy at sufferance is not created, by a tenant for life continuing in possession, without the consent of the owner, after the determination of the life estate. *Livingston v. Tanner* (1856), 14 N. Y. 64. But in *Nesbitt v. Thompson* (1916), 93 Misc. 251, 157 N. Y. Supp. 166, it was held that where the life tenant of a farm which she leased by a written instrument under seal for five years dies within the term, the tenant if he continue in the use and occupation of the premises without agreement with the remaindermen is a tenant at sufferance. *Nesbitt v. Thompson* (1916), 93 Misc. 251, 157 N. Y. Supp. 166.

As to what constitutes a tenancy by sufferance, see also *Marquart v. La Farge* (1856), 12 N. Y. Super. (5 Duer) 559, 565.

§ 31. **Estates in fee simple and fee simple absolute.**—An estate of inheritance continues to be termed a fee simple, or fee, and when not defeasible or conditional, a fee simple absolute, or an absolute fee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 21; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 2.

In general.—A fee is the greatest interest that can be granted in real estate. *Matter of Brookfield* (1903), 176 N. Y. 138, 146, 68 N. E. 138.

A person may have a fee simple in incorporeal hereditaments as well as in lands. *Canfield v. Ford* (1858), 28 Barb. 336. A fee simple is of such a character that the grantor of it disposes of his entire interest. *Van Rensselaer v. Dennison* (1866), 35 N. Y. 392, 399.

Fee simple and fee simple absolute.—Originally the terms fee simple and fee simple absolute had one and the same meaning. *Jackson ex dem. Hicks v. Van Zandt* (1815), 12 Johns. 169, 176; *Lott v. Wykoff* (1849), 2 N. Y. 355, 357; *Barlow v. Barlow* (1849), 2 N. Y. 386.

Conditional fee.—The statute recognizes a fee which may be limited upon the happening of a subsequent event, as in the case where a devise is made of an estate in fee with a limitation over in the event of the devisee dying under age and without issue. *Norris v. Beyea* (1855), 13 N. Y. 273. See also *Vanderzee v. Slingerland* (1886), 103 N. Y. 47, 8 N. E. 247; *Matter of Miller* (1896), 11 App. Div. 337, 42 N. Y. Supp. 148, *affd.* (1899), 161 N. Y. 71, 55 N. E. 385; *Chapman v. Moulton* (1896), 8 App. Div. 64, 40 N. Y. Supp. 408. The fee is conditional if it is limited upon the happening of some event of such a character that it may never happen. *Van Horne v. Campbell* (1885), 100 N. Y. 287, 292, 3 N. E. 316, 771.

A devise to a daughter of an estate in fee liable to be defeated as to one-half thereof by the return of a brother is a conditional estate. *Hatfield v. Sneden* (1873), 54 N. Y. 280.

A devise "to the use of A. until Gloversville shall be incorporated as a village," was held not to create a fee in A. *Leonard v. Burr* (1858), 18 N. Y. 96. See also *Stillwell v. Melrose* (1878), 15 Hun 378; *Matter of Clark* (1902), 38 Misc. 617, 78 N. Y. Supp. 108.

A determinable fee is good at common law and violates no statute of the state. *Bramhall v. Ferris* (1856), 14 N. Y. 41.

One seized of a determinable fee may convey the estate, and the grantee will take it subject to defeasance on the happening of any event upon which the executory devise is limited. *Grout v. Townsend* (1845), 2 Den. 336.

§ 32. **Estates tail abolished; remainders thereon.**—Estates tail have been abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed before the twelfth day of July, seventeen hundred and eighty-two, shall be deemed a fee simple; and if no valid remainder be limited thereon, a fee simple absolute. Where a remainder in fee shall be limited on any estate which would be a fee tail, according to the law of this state, as it existed previous to such date, such remainder shall be valid, as a contingent limitation on a fee, and shall vest in possession on the death of the first taker, without issue living at the time of such death.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 22; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 3, 4.

Effect of section.—It has been held that the statute to abolish entails, by converting the estates of all persons "seized in fee tail of any lands," etc., into a

fee simple, operated upon vested remainders in tail as upon estates tail which had taken effect in possession. *Jenkins v. Fahey* (1878), 73 N. Y. 355, 364, and cases cited.

This section declares the result of previous legislation instead of creating any rule of law. It can hardly be said to abolish estates tail, but rather to announce as a fact that they were already abolished. *Van Rensselaer v. Poucher* (1847), 5 Den. 35, 46.

Estates tail have been converted into fees simple. *Grout v. Townsend* (1846), 2 Den. 336; *Matter of Kirk v. Richardson* (1884), 32 Hun 434; *Lott v. Wykoff* (1849), 2 N. Y. 355; *Wilkes v. Lion ex dem. Eden* (1823), 2 Cow. 333; *Harriot v. Harriot* (1898), 25 App. Div. 245, 248, 49 N. Y. Supp. 447; *Coe v. De Witt* (1880), 22 Hun 428; *Emmons v. Cairns* (1848), 3 Barb. 243, 247; *Wood v. Taylor* (1894), 9 Misc. 640, 644, 30 N. Y. Supp. 433, *affd.* (1895), 11 Misc. 713, 35 N. Y. Supp. 1135; *Barlow v. Barlow* (1849), 2 N. Y. 386; *Brown v. Lyon* (1852), 6 N. Y. 419. Estates tail were converted into estates in fee and the heirs of the devisee or grantee take by descent, and not as purchasers. *Barns v. Hathaway* (1873), 66 Barb. 452, 456. See also *Wendell v. Crandall* (1848), 1 N. Y. 491.

The statute abolishing estates tail operated as well upon vested remainders in tail as upon estates tail which had taken effect in possession. *Venderheyden v. Crandall* (1846), 2 Den. 9, *affd.* (1848), 1 N. Y. 491.

Estate tail.—A devise to a man and his heirs male created an estate tail. A devise over in case any of the first takers died without any male heirs is within the statute. *Alger v. Alger* (1884), 31 Hun 471, 475.

Valid remainder limited.—See *Buel v. Southwick* (1877), 70 N. Y. 581, 585.

Contingent limitation upon a fee, devise valid as. *Nellis v. Nellis* (1885), 99 N. Y. 505, 512, 3 N. E. 59.

§ 33. **Freehold; chattels real; chattel interests.**—Estates of inheritance and for life shall continue to be termed estates of freehold; estates for years are chattels real; and estates at will or by sufferance continue to be chattel interests, but not liable as such to sale on execution.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 23; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 5.

References.—Definition of "inheritance" in statute relative to descents, Decedent Estate Law, § 80. Descent of real property as to which decedent owner died intestate, *Id.* §§ 81-96.

The distinction between freehold estates and chattels real is preserved; and, although long-term leases may be, and often are, of far greater value than a life-estate which is a freehold, yet they are only estates for years and mere chattels. *Averill v. Taylor* (1853), 8 N. Y. 44, 52.

Estate for years; chattel real.—The interest of a tenant of realty under a lease for years is not real estate, but is a chattel real. *Matter of Ehrsam* (1899), 37 App. Div. 272, 55 N. Y. Supp. 942; *Blanchard v. Blanchard* (1875), 6 T. & C. 551, 554, *affd.* (1877), 70 N. Y. 615. A leasehold estate for years in lands, situated in this state, owned by a resident of another state, is personal property. *Despard v. Churchill* (1873), 53 N. Y. 192, 199. The estate of a lessee does not survive the contract by which it was created. *Burr v. Stenton* (1868), 52 Barb. 377, 389, *affd.* (1871), 43 N. Y. 462.

Lease of mining rights constituting a chattel real. *Buck v. Cleveland* (1911), 143 App. Div. 874, 881, 128 N. Y. Supp. 864.

A tenant from year to year has an estate for years which is deemed a chattel real. *Bigelow v. Finch* (1854), 17 Barb. 394, 396. The estate of a tenant from year to year passes to his executors and they are liable for the rent in their

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representative capacity, so long as they occupy the premises. *Pugsley v. Alkin* (1854), 11 N. Y. 494, 498. See also *Wells v. Higgins* (1892), 132 N. Y. 459, 30 N. E. 861; *People ex rel. Higgins v. McAdam* (1881), 84 N. Y. 287, 295.

A chattel mortgage cannot be given of a lease or real estate for ten years, it being a chattel real, and not the proper subject of a chattel mortgage. In re *Fulton* (1907), 153 Fed. 664.

Sale on execution.—A lessee for years has an estate in lands which may be sold on execution. *Burr v. Stenton* (1871), 43 N. Y. 462, 465; *Bennett v. Crain* (1886), 41 Hun 183, 186.

Tenancy at will or by sufferance.—See generally, *Brewster v. Striker* (1852), 1 E. D. Smith 321, 333, *affd.* (1848), 2 N. Y. 19; *Dickinson v. Smith* (1857), 25 Barb. 102, 108; *Colvin v. Baker* (1848), 2 Barb. 206; *Bigelow v. Finch* (1851), 11 Barb. 498.

§ 34. When estate for life of third person is freehold; when chattel real.—An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee; after his death it shall be deemed a chattel real.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 24; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 6.

See generally, *Reynolds v. Collin* (1842), 3 Hill 441; *Crooked Lake Nav. Co. v. Keuka Nav. Co.* (1885), 37 Hun 9; *Gillis v. Brown* (1826), 5 Cow. 388.

§ 35. Estates in possession and expectancy.—Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 25; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 7, 8.

Estates in possession.—*Grout v. Van Schoonhoven* (1844), 1 Sandf. Ch. 336, 342; *Staples v. Mead* (1912), 152 App. Div. 745, 748, 137 N. Y. Supp. 847.

Estates in expectancy.—By the term expectant estates the legislature intended to include every present right or interest, either vested or contingent, which may, by possibility, vest in possession at a future day. *Freeborn v. Wagner* (1866), 49 Barb. 43, 56, *affd.* (1868), 2 Abb. Ct. App. Dec. 175; *Hiles v. Fisher* (1893), 67 Hun 229, 235, 22 N. Y. Supp. 795, *mod.* (1895), 144 N. Y. 306, 39 N. E. 337, 30 L. R. A. 305. But they did not intend to include the mere possibility of a reverter, which the grantor has after he has conveyed in fee on condition subsequent. *Nicoll v. N. Y. & Erie R. R. Co.* (1854), 12 N. Y. 121, 133.

An estate in expectancy is created where a trustee conveying personal property reserves to the grantor the reversion of the trust fund at the death of the beneficiary without issue, and under § 59, *post*, is descendible, devisable and alienable in the same manner as an estate in possession, and the owner is empowered to deal with it the same as if he were actually in possession of the property representing the estate. *N. Y. Life Ins. & T. Co. v. Cary* (1908), 191 N. Y. 33, 83 N. E. 598, *revg.* (1907), 120 App. Div. 264, 105 N. Y. Supp. 125; *Farmers' Loan & Trust Co. v. Bostwick* (1908), 190 N. Y. 569, 83 N. E. 1124, *revg.* (1907), 120 App. Div. 271, 105 N. Y. Supp. 130.

An estate in expectancy is beneficial where the devisee takes solely for his own use or benefit, and not as the mere holder of the title for the use of another. *Matter of Seaman* (1895), 147 N. Y. 69, 77, 41 N. E. 401.

See generally, as to estates in expectancy, *Baldwin v. Baldwin* (1893), 74 Hun 415, 417, 26 N. Y. Supp. 579; *Ham v. Van Orden* (1881), 84 N. Y. 257, 269; *Griffin*

v. Shepard (1891), 124 N. Y. 70, 26 N. E. 339; Palmer v. Dunham (1889), 52 Hun 468, 6 N. Y. Supp. 46, *affd.* (1890), 125 N. Y. 68, 25 N. E. 1081; Matter of Sutherland (1888), 14 N. Y. St. Rep. 84, 88; Lakey v. Scott (1882), 15 Wkly. Dig. 148; Richardson v. Hunt (1891), 38 N. Y. St. Rep. 274, 280, 14 N. Y. Supp. 48; Moore v. Little (1869), 41 N. Y. 66; Knowlton v. Atkins (1892), 134 N. Y. 313, 318, 31 N. E. 914; Matter of Harteau (1908), 125 App. Div. 710, 110 N. Y. Supp. 59.

§ 36. Enumeration of estates in expectancy.—All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into,

1. Future estates; and
2. Reversions.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 26; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 9, 45.

Future expectant estates.—Bailey v. Bailey (1884), 97 N. Y. 460, 471; Dodge v. Stevens (1887), 105 N. Y. 585, 588, 12 N. E. 759.

A conveyance of lands to E for life, with a proviso that, should the estate terminate during the lifetime of E, remainder to go to N for the residue of E's life, and further providing that on the death of E the remainder should go to him and his heirs, is a grant of a life estate and a remainder; and the interest, other than the life estate, is an estate in expectancy, for it is a future estate, termed a remainder, which can be created and transferred by that name. Ray v. Jaeger (1909), 131 App. Div. 294, 115 N. Y. Supp. 737.

Section cited.—Savage v. Pike (1866), 45 Barb. 464, 469.

§ 37. Definition of future estates.—A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 27; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 10.

Section cited.—Ray v. Jaeger (1909), 131 App. Div. 294, 115 N. Y. Supp. 737; Rasquin v. Hamersley (1912), 152 App. Div. 522, 137 N. Y. Supp. 578, *affd.* (1913), 208 N. Y. 630, 102 N. E. 1112.

Matter of McQueen (1917), 99 Misc. 185, 191, 163 N. Y. Supp. 287; See Adami v. Gercken (1914), 164 App. Div. 472, 475, 150 N. Y. Supp. 8, *affd.* (1917), 221 N. Y. 556; Tilden v. Green (1897), 130 N. Y. 29, 47, 28 N. E. 880, 14 L. R. A. 33; Booth v. Baptist Church (1891), 126 N. Y. 215, 237, 28 N. E. 238; Jessup v. Pringle Mem. Home (1899), 27 Misc. 430, 59 N. Y. Supp. 207, *affd.* (1900), 47 App. Div. 622, 62 N. Y. Supp. 308; Eells v. Lynch (1861), 21 N. Y. Super. (8 Bosw.) 465, 480.

§ 38. Definition of remainder.—Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 28; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 11.

Section cited.—Ray v. Jaeger (1909), 131 App. Div. 294, 115 N. Y. Supp. 737; Matter of Dobson (1911), 73 Misc. 170, 132 N. Y. Supp. 472. See also Dana v. Murray (1890), 122 N. Y. 604, 616, 26 N. E. 21; Dodge v. Stevens (1887), 105 N. Y. 585, 588, 12 N. E. 759; Goebel v. Wolf (1889), 113 N. Y. 405, 412, 21 N. E. 388; Hawley v. James (1835), 5 Paige 318, 466, *revd.* (1836), 16 Wend. 61; Powers v. Bergen (1852), 6 N. Y. 358, 360.

§ 39. **Definition of reversion.**—A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of one or more particular estates granted or devised.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 29; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 12.

Consolidators' note.—The amendment of this section changing "a particular estate" to "one or more particular estates," conforms to the revisers' intention, which failed of expression.

A reversion necessarily assumes that the grantor has not parted with his entire estate. *Wood v. Taylor* (1894), 9 Misc. 640, 646, 30 N. Y. Supp. 433, *affd.* (1895), 11 Misc. 713, 31 N. Y. Supp. 1135.

A right of entry is neither a reversion nor a possibility of a reversion. *Upington v. Corrigan* (1894), 79 Hun 488, 490, 29 N. Y. Supp. 1002, *affd.* (1896), 151 N. Y. 143, 45 N. E. 359, 37 L. R. A. 794; *De Peyster v. Michael* (1852), 6 N. Y. 506; *Nicoll v. N. Y. & E. R. R. Co.* (1854), 12 N. Y. 139.

Section cited.—*Clark v. Cammann* (1897), 14 App. Div. 127, 133, 43 N. Y. Supp. 575, *affd.* (1899), 160 N. Y. 315, 54 N. E. 709.

§ 40. **When future estates are vested; when contingent.**—A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an immediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

Source.—Former Real Prop. L. (L. 1896, ch. 547), § 30; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 13.

Distinction between vested and contingent estates.—See *Moore v. Littel* (1886), 41 N. Y. 66; *Dodge v. Stevens* (1887), 105 N. Y. 585, 12 N. E. 759; *Hennessey v. Patterson* (1895), 85 N. Y. 91; *Smith v. Scholtz* (1893), 68 N. Y. 41; *Hard v. Ashley* (1890), 117 N. Y. 606, 23 N. E. 177; *Heath v. Hewitt* (1891), 127 N. Y. 166, 27 N. E. 959, 13 L. R. A. 46; *Montignani v. Blade* (1895), 145 N. Y. 111, 112, 39 N. E. 719; *Campbell v. Stokes* (1894), 142 N. Y. 23, 36 N. E. 811; *Van Nostrand v. Marvin* (1897), 16 App. Div. 28, 44 N. Y. Supp. 679; *Trowbridge v. Cross* (1909), 195 N. Y. 596, 89 N. E. 1114.

The leading inquiry upon which the question of vesting or not vesting turns, is whether the gift is immediate and the time of payment or of enjoyment only postponed, or is future and contingent, depending upon the beneficiary arriving of age or surviving some other person, or the like. If *futurity* is annexed to the *substance* of the gift, the vesting is suspended, but if it appear to relate to the time of payment only, the legacy vests *instantly*. *Everitt v. Everitt* (1864), 29 N. Y. 39, 74. See also *Fargo v. Squires* (1896), 6 App. Div. 485, 490, 39 N. Y. Supp. 648, *affd.* (1897), 154 N. Y. 250, 48 N. E. 509; *McGillis v. McGillis* (1898), 154 N. Y. 532, 540, 49 N. E. 145, *modfg.* (1896), 11 App. Div. 359, 42 N. Y. Supp. 921; *Matter of Embree* (1896), 9 App. Div. 602, 604, 41 N. Y. Supp. 737, *affd.* (1898), 154 N. Y. 778, 49 N. E. 1096; *Delaney v. McCormack* (1882), 88 N. Y. 174; followed in *Nathan v. Hendricks* (1895), 87 Hun 483, 34 N. Y. Supp. 1016, *affd.* (1895), 147 N. Y. 348, 41 N. E. 702.

Postponement of time of possession.—The vesting of a remainder will not be deferred, where it appears that payment or distribution was postponed for the convenience of the estate. *Smith v. Smith* (1898), 31 App. Div. 598, 602, 52 N. Y.

Supp. 165; *Sweet v. Chase* (1848), 2 N. Y. 73, 80. A mere postponement of the time of payment of a legacy or delivery of property does not make such legacy contingent. *Orange County Trust Co. v. Morrison* (1907), 56 Misc. 88, 91, 106 N. Y. Supp. 940. See also *National Park Bank of N. Y. v. Billings* (1911), 144 App. Div. 536, 129 N. Y. Supp. 846, *affd.* 203 N. Y. 556, 96 N. E. 1122; *Loos v. Leahy* (1911), 144 App. Div. 558, 129 N. Y. Supp. 859.

In *Sage v. Wheeler* (1896), 3 App. Div. 38, 41, 37 N. Y. Supp. 1107, *affd.* (1899), 158 N. Y. 679, 52 N. E. 1126, it was held that the testator in the use of the words, "then to be equally divided," intended to indicate the time when the right of possession should begin, to wit, at the close of the antecedent life estate.

An estate in remainder will vest at once, even where there is no gift except a direction to distribute at the end of a life estate, if the postponement is merely to let in the intermediate life estate. *Matter of Embree* (1896), 9 App. Div. 602, 605, 41 N. Y. Supp. 737, *affd.* (1897), 154 N. Y. 778, 49 N. E. 1096.

Division or payment at future time.—Where the only words of gift are found in the direction to divide or pay at a future time, the gift is future, not immediate, contingent and not vested. *Goebel v. Wolff* (1889), 113 N. Y. 405, 412, 21 N. E. 388; *Matter of Crane* (1900), 164 N. Y. 71, 76, 58 N. E. 47, *revg.* (1899), 36 App. Div. 468, 55 N. Y. Supp. 822. (In the latter case Judge Parker gives the rules of construction and exceptions.) *Zartman v. Ditmas* (1899), 37 App. Div. 173, 178, 55 N. Y. Supp. 908; *Shangle v. Hallock* (1896), 6 App. Div. 55, 59, 39 N. Y. Supp. 619; *Matter of Traver* (1898), 30 App. Div. 261, 51 N. Y. Supp. 614, *mod.* (1899), 161 N. Y. 54, 55 N. E. 406; *Staples v. Hawes* (1898), 24 Misc. 475, 479, 53 N. Y. Supp. 860, *affd.* (1899), 39 App. Div. 548, 57 N. Y. Supp. 452; *Warren v. Durant* (1879, 76 N. Y. 133; *Ackerman v. Ackerman* (1901), 63 App. Div. 370, 71 N. Y. Supp. 780; *Truesdell v. Pierce* (1912), 152 App. Div. 453, 137 N. Y. Supp. 349; *In re Kings Co. Trust Co.* (1913), 158 App. Div. 453, 143 N. Y. Supp. 597.

The general rule is subject to many exceptions. See *Shangle v. Hallock* (1896), 6 App. Div. 55, 59, 39 N. Y. Supp. 619. And is to be applied in subordination to the testamentary intention. *Matter of Traver* (1898), 30 App. Div. 261, 264, 51 N. Y. Supp. 614, *mod.* (1899), 161 N. Y. 54, 55 N. E. 406; *Matter of Merriman* (1895), 91 Hun 120, 126, 36 N. Y. Supp. 131, *affd.* (1897), 154 N. Y. 313, 48 N. E. 537. This rule was referred to in the case of *Smith v. Edwards* (1882), 88 N. Y. 92, 105, and it was there said that "It does not control where the language of the will, while not expressly saying, 'I give and bequeath,' does not plainly import a present gift, intended to vest immediately, without reference to the clause of distribution." See also *Carr v. Smith* (1898), 25 App. Div. 214, 49 N. Y. Supp. 351, *affd.* (1900), 161 N. Y. 636, 57 N. E. 1106; *Henderson v. Henderson* (1889), 113 N. Y. 1, 20 N. E. 814.

Where a testamentary gift is found only in a direction to divide a fund at a future time the gift is future and contingent and not vested. But this rule is subordinate to the primary canon for the construction of wills, that the intention of the testator as collected from the whole instrument must prevail, and, if the application of the subordinate rule would defeat the testator's intention, it must give way. *Whitwell v. Whitwell* (1911), 146 App. Div. 270, 130 N. Y. Supp. 906

A remainder left to "be equally divided among my children" vests at the testator's death. *Gwyer v. Gwyer* (1896), 5 App. Div. 156, 38 N. Y. Supp. 1097, *affd.* (1889), 160 N. Y. 659, 55 N. E. 1095; *Thomson v. Hill* (1895), 87 Hun 111, 33 N. Y. Supp. 810, *affd.* 155 N. Y. 677, 48 N. E. 1104; *Sage v. Wheeler* (1896), 3 App. Div. 38, 37 N. Y. Supp. 1107, *affd.* 158 N. Y. 579, 52 N. E. 1126; *Miller v. Gilbert* (1894), 144 N. Y. 68, 38 N. E. 979; *Hang v. Schumacher* (1900), 166 N. Y. 506, 60 N. E. 255.

A devise to a widow for life, and after her death to executors in trust to

sell the lands devised as they shall deem best, and to divide the proceeds equally among testator's heirs, vests in each heir an alienable estate from the time of the testator's death. *Sayles v. Best* (1893), 140 N. Y. 368, 35 N. E. 636; *In re Collins* (1893), 70 Hun 273, 24 N. Y. Supp. 226, *affd.* 144 N. Y. 522, 39 N. E. 629; *In re Young* (1895), 145 N. Y. 535, 40 N. E. 226.

Where a testator left a sum in trust to the use of his wife, with power of appointment, and in default of such disposition by her, at her death to his own then surviving next of kin, a son of the testator during the lifetime of his mother had no claim or title, absolute or defeasible, vested or contingent, but merely an expectation of an estate or interest in the future, which he could neither enjoy nor transmit. *In re Wetmore* (1901), 108 Fed. 520.

The "divide and pay over" rule, that where the only words of a gift are found in a direction to divide or pay at a future time the gift is contingent and not vested, will never be applied when to do so would nullify the express intention of the testatrix, but there are many exceptions to the rule, two of which are as follows:

1. If the postponement of the payment is for the purpose of letting in an intermediate estate, then the interest will be deemed vested at the death of the testatrix.

2. Where there are words importing a gift in addition to the direction to the executors or trustees to pay over, divide or distribute.

Matter of McQueen (1917), 99 Misc. 185, 163 N. Y. Supp. 287.

Words relating merely to time of enjoyment.—Words or phrases denoting time, such as "when," "then," and "from and after," in a devise of a remainder, limited upon a particular estate determinable on an event which must necessarily happen, are construed to relate merely to the time of the enjoyment of the estate, and not to the time of its vesting. *Hersee v. Simpson* (1897), 154 N. Y. 496, 500, 48 N. E. 890; *Connelly v. O'Brien* (1901), 166 N. Y. 406, 408, 60 N. E. 20, *revd.* (1896), 40 App. Div. 574, 58 N. Y. Supp. 45; *Moore v. Lyons* (1840), 25 Wend. 119, 144; *Livingston v. Greene* (1873), 52 N. Y. 118, 123; *Matter of McClyment* (1885), 16 Abb. N. C. 262, 264; *McGillis v. McGillis* (1898), 154 N. Y. 532, 541, 49 N. E. 145, *modfg.* (1897), 11 App. Div. 359, 42 N. Y. Supp. 921; *Clark v. Peters* (1910), 68 Misc. 252, 124 N. Y. Supp. 961.

The words "on," "when," "after," "from and after," and similar expressions used in a devise of a remainder following a life estate are not in and of themselves sufficient to justify a conclusion that a remainder is contingent and not vested; they relate merely to the time of enjoyment of the estate and not to the time of its vesting in interest. *Trowbridge v. Coss* (1908), 126 App. Div. 679, 683, 110 N. Y. Supp. 1108, *affd.* (1909), 195 N. Y. 596.

Where testator devised to his son certain real estate during his natural life, and "at his death to his children," the word "at" designated the time of enjoyment merely, and not the time of the vesting of the estate; and hence the grandchildren acquired vested interests immediately on their birth, which they could alienate by mortgage or otherwise. *Manhattan Real Estate & Building Ass'n. v. Cudlipp* (1903), 80 App. Div. 532, 80 N. Y. Supp. 993.

In *Ackerman v. Gorton* (1876), 67 N. Y. 63, the testator devised to his wife for life, "and from and immediately after her decease," directed that the property should be divided equally among his children, and it was held, that the children took a vested interest, the enjoyment only being postponed. In *Hutchings v. Hutchings* (1911), 144 App. Div. 757, 129 N. Y. Supp. 622, *affd.* (1913), 210 N. Y. 539, 103 N. E. 1125, it was held that the words "upon his decease" did not prevent the vesting of the remainders, but merely postponed their enjoyment until the death of the life tenant. See *Karstens v. Karstens* (1898), 29 App. Div. 229, 51 N. Y. Supp. 795.

Effect of the death of life beneficiary before testator.—The death of a devisee for life, before the testator, has no effect upon estates in remainder, except to entitle the devisees thereof to possession as soon as the will takes effect. *Campbell v. Rawdon* (1858), 18 N. Y. 412; *Hennessey v. Patterson* (1881), 85 N. Y. 91, 100. But where a future interest is devised, not directly to a given person, but indirectly through the exercise of a power conferred upon trustees, the devise is designed to be contingent, and survivorship at the time of distribution is an essential condition to the acquisition of an interest in the subject of the gift. *Matter of Baer* (1895), 147 N. Y. 348, 354, 41 N. E. 702.

Limitation of life estate to a person with remainder to his heirs. See *Townshend v. Frommer* (1891), 125 N. Y. 446, 468, 26 N. E. 805; *Byrnes v. Stilwell* (1886), 103 N. Y. 453, 9 N. E. 241; *Surdam v. Cornell* (1889), 116 N. Y. 305, 22 N. E. 450; *Nelson v. Russell* (1892), 135 N. Y. 137, 31 N. E. 1008; *Howse v. Jackson* (1888), 50 N. Y. 161; *Monarque v. Monarque* (1894), 80 N. Y. 320.

Devise with limitation over in case of death before arriving at certain age, or without issue. See *Dimmick v. Patterson* (1894), 142 N. Y. 322, 37 N. E. 109; *Matter of Crossman* (1889), 113 N. Y. 503, 23 N. E. 180; *Radley v. Kuhn* (1884), 97 N. Y. 26; *Avery v. Everett* (1888), 110 N. Y. 317, 18 N. E. 148, 1 L. R. A. 264; *Norris v. Beyea* (1778), 13 N. Y. 273; *Roome v. Phillips* (1881), 24 N. Y. 463; *Vanderzee v. Slingerland* (1886), 103 N. Y. 47, 8 N. E. 247.

Estates limited to survivors.—See *Kelso v. Lorillard* (1895), 85 N. Y. 177; *Goebel v. Wolff* (1889), 113 N. Y. 405, 412, 21 N. E. 388; *Matter of Allen* (1896), 151 N. Y. 243, 45 N. E. 554; *Paget v. Melcher* (1898), 26 App. Div. 12, 49 N. Y. Supp. 922, *revd.* (1898), 156 N. Y. 399, 51 N. E. 24.

Trust deeds directing a trustee to sell property and divide the proceeds after the death of the survivor of two life beneficiaries does not vest a present interest in the remaindermen. Legacies of the contingent remaindermen who died before the surviving life beneficiary lapsed. *Geisse v. Bunce* (1897), 23 App. Div. 289, 48 N. Y. Supp. 249. Where a trust is created for the benefit of the three children of the testator, the rents and profits to be paid to them for life, and on the death of one the rents and profits to be paid to the other two, and on the death of two the entire estate to go to the survivor, the remainder in the survivor is contingent. *Thall v. Dreyfus* (1903), 84 App. Div. 569, 82 N. Y. Supp. 691.

A contingent remainder is given by a will devising land in trust to pay the income to two persons or the survivor, and on the death of the survivor to convey the land to the issue, if any, of the life tenants, or if there be no issue surviving, then to another. *Richards v. Hartshome* (1906), 110 App. Div. 650, 97 N. Y. Supp. 754.

Remainders may be vested subject to being divested.—*Matter of Steinwender* (1917), 176 App. Div. 517, 163 N. Y. Supp. 309; *Ranhofer v. Hall Realty Co.* (1911), 143 App. Div. 237, 128 N. Y. Supp. 230; *Flanagan v. Staples* (1898), 28 App. Div. 319, 51 N. Y. Supp. 10; *Clark v. Clark* (1898), 23 Misc. 272, 50 N. Y. Supp. 1041; *Brennan v. Storm* (1897), 21 App. Div. 236, 47 N. Y. Supp. 661; *In re Whittemore's Estate* (1891), 60 Hun 579, 14 N. Y. Supp. 453, *affd.* 131 N. Y. 576, 30 N. E. 67; *Bowditch v. Ayrault* (1893), 138 N. Y. 222, 33 N. E. 1067.

Where property was devised to testator's wife for life and at her death to his children, and in case any of the children should have died leaving issue, the share of such child to vest in his issue, but if any child died without issue, his share to vest in his surviving brothers and sisters, the property vested in the children at the death of the testator, subject to being divested by failure to survive the life tenant. *Schwartz v. Rehfuß* (1908), 129 App. Div. 630, 114 N. Y. Supp. 92, *affd.* (1910), 198 N. Y. 585, 92 N. E. 1101.

Remainder vested subject to open and let in after born children. *Losey v.*

Stanley (1895), 147 N. Y. 560, 42 N. E. 8; In re Davis' Estate (1895), 91 Hun 53, 36 N. Y. Supp. 822, *affd.* 149 N. Y. 539, 44 N. E. 185; Hersee v. Simpson (1897), 154 N. Y. 496, 48 N. E. 890; Lake v. Lasche (1909), 132 App. Div. 684, 117 N. Y. Supp. 465.

When remaindermen do not take a vested future interest.—Where a testator leaves property in trust, the income to be paid to a beneficiary for life, and upon the death of such beneficiary the remainder in trust to the children of such beneficiary until one or both of such children shall have attained the age of twenty-one years, upon the death of one of such children the entire estate to go to the survivor, such children as remaindermen do not take a vested future interest. At no time after testator's death was the estate vested under the statutory definition of a vested estate. Upon the termination of the estate of the beneficiary during the lifetime of the children there was no person in existence having an immediate right to the possession of the property. Such right did not exist in either of the *cestuis que trust* until they or the survivor reached the age of twenty-one years, and until that time the person to whom and the event on which the right to possession of the trust fund was limited were both uncertain, and the future estate was contingent under this section. At no time was either of the children entitled to possession of the trust fund before their majority and when their interest therein ceased upon their death it vested to the residuary estate. Brooklyn Trust Co. v. Phillips (1909), 134 App. Div. 697, 119 N. Y. Supp. 401, *affd.* (1911), 201 N. Y. 561, 95 N. E. 1124.

Immediate right to possession; what constitutes.—The right of a beneficiary under a trust to convey at the expiration of a life estate is not, during the life estate "an immediate right to the possession of the property" within the meaning of this section. Townshend v. Fromme (1891), 125 N. Y. 446, 26 N. E. 805, *affg.* (1889), 57 N. Y. Super. (25 G. & S.) 90, 5 N. Y. Supp. 442.

Vesting of estates is favored by the law. Stokes v. Weston (1892), 142 N. Y. 433, 37 N. E. 515; Smith v. Edwards (1882), 88 N. Y. 92, 109; Brynes v. Stilwell (1886), 103 N. Y. 453, 9 N. E. 241; Low v. Harmony (1878), 72 N. Y. 408; Bunyan v. Pierson (1896), 8 App. Div. 84, 40 N. Y. Supp. 429; Minot v. Minot (1897), 17 App. Div. 521, 526, 45 N. Y. Supp. 554; Embury v. Sheldon (1877), 68 N. Y. 227, 236; Gwyer v. Gwyer (1896), 5 App. Div. 156, 159, 38 N. Y. Supp. 1097, *affd.* (1899), 160 N. Y. 659, 55 N. E. 1095; Carr v. Smith (1898), 25 App. Div. 214, 217, 49 N. Y. Supp. 351, *affd.* (1900), 161 N. Y. 636, 57 N. E. 1106; Livingston v. Greene (1873), 52 N. Y. 118, 123; Crossman v. Crossman (1887), 6 Dem. 148, 150, *affd.* (1888), 15 N. Y. St. Ry. 841, 1 N. Y. Supp. 103, *affd.* (1889), 113 N. Y. 503, 21 N. E. 180; Salter v. Drowne (1912), 205 N. Y. 204, 98 N. E. 401; Camman v. Bailey (1913), 210 N. Y. 19, 103 N. E. 824; Russell v. Furniss (1914), 83 Misc. 499, 145 N. Y. Supp. 402.

While the law favors the vesting of estates, where there are no words of gift of the remainder of a trust estate, except a direction to divide and transfer at a future time, it will be assumed that the testator intended to create a future inalienable estate during the life of the trust. Beatty v. Godwin (1908), 127 App. Div. 98, 102, 111 N. Y. Supp. 373, *revd.* (1910), 198 N. Y. 35, 91 N. E. 288.

A remainder is not to be considered as contingent in any case where it may be held vested consistently with the intent of the testator. Matter of Merriman (1895), 91 Hun 120, 126, 36 N. Y. Supp. 131, *affd.* (1897), 154 N. Y. 313, 48 N. E. 537; Hersee v. Simpson (1897), 154 N. Y. 496, 500, 48 N. E. 890; Connelly v. O'Brien (1901), 166 N. Y. 406, 408, 60 N. E. 20, *revg.* (1899), 40 App. Div. 574, 58 N. Y. Supp. 45. The law favors such a construction of a will as will avoid disinheritance of remaindermen who may happen to die before the termination of the precedent estate. Trowbridge v. Coss (1908), 126 App. Div. 679, 683, 110 N. Y. Supp.

1108, *affd.* (1909), 195 N. Y. 596, 89 N. E. 1114; *Clark v. Grosh* (1912), 81 Misc. 407, 142 N. Y. Supp. 966; *Doscher v. Wyckoff* (1908), 63 Misc. 414, 113 N. Y. Supp. 655, *affd.* 132, App. Div. 139, 116 N. Y. Supp. 389.

The rule is subordinated to the rule that the intention of the testator controls. *Williams v. Williams* (1912), 152 App. Div. 323, 136 N. Y. Supp. 990; *Faber v. Hanck* (1913), 80 Misc. 442, 141 N. Y. Supp. 153.

The construction of a will will be preferred which vests the title immediately upon the testator's death, such a construction preventing disinheritance in case of the death of a remainderman prior to the termination of the life estate, and fixing unalterably the identity of those entitled to the fee, instead of leaving the passing of the estate until the intervening estates are determined. *Van Deusen v. Van Deusen* (1910), 138 App. Div. 357, 122 N. Y. Supp. 718.

Vested remainder.—Under a will, which after placing lands in trust, income to the testator's wife for life, directs the executors to continue the trust on the widow's death, income to the maintenance of a son for life, "and upon his decease" the trustees to "convey" to a daughter and another son, the remaindermen take vested rather than contingent remainders. *Hutchings v. Hutchings* (1911), 144 App. Div. 757, 129 N. Y. Supp. 622, *affd.* (1913), 210 N. Y. 539, 103 N. E. 1125.

Where a will gave to devisee a fee in certain lands on the death of the testator's widow, it conferred a vested remainder, which was not defeated by the death of the devisee before the widow, but passed to the devisee's heirs, subject to the widow's life estate, *Lewis v. Howe* (1903), 174 N. Y. 340, 66 N. E. 975.

Where a testator, without legal education or experience, draws a will, leaving his property to his wife for life, with a remainder to his two children "or their heirs," the words quoted are to be construed with reference to the death of the testator, and the remainders are vested. *Eyclesheimer v. Hunter* (1914), 162 App. 643, 147 N. Y. Supp. 958.

Where a testator gives his property to his children subject to a life estate of his widow there is no contingency, but a present gift of the entire estate divided into the life interest to the wife and an absolute vested remainder in the children. From the moment of the testator's death his children in being, always have the immediate right to the possession of the property on the determination of the precedent estate for life in their mother. *Vanderpoel v. Burke* (1909), 63 Misc. 545, 118 N. Y. Supp. 548.

A remainder is vested in interest where the person is in being and ascertained, who will, if he lives, have an absolute and immediate right to the possession of the land upon the ceasing or failure of all the precedent estates, provided the estate limited to him by the remainder shall so long continue. In other words, where the remainderman's right to an estate in possession cannot be defeated by third persons, or contingent events, or by failure of a condition precedent, if he lives, and the estate limited to him by way of remainder continues, till all the precedent estates are determined, his remainder is vested in interest. *Hawley v. James* (1835), 5 Paige 318, 466, *revd.* (1836), 16 Wend. 61.

A remainder is vested where the interest is fixed, although it may be uncertain whether it will ever take effect in possession. *Matter of Genunge v. Murphy* (1908), 59 Misc. 381, 112 N. Y. Supp. 310.

A will giving a life estate to the testator's widow, and "then to such of my children as may then be alive, share and share alike," creates a vested remainder in the children, postponing the enjoyment until the termination of the life estate. *Connelly v. O'Brien* (1901), 166 N. Y. 406, 60 N. E. 20, *revg.* (1899), 40 App. Div. 574, 58 N. Y. Supp. 45.

Where real property is devised to the testator's widow during her life or widowhood with a remainder over in case of death or marriage, to surviving children,

and the issue of those who have died, the remaindermen are ascertainable at the death of the testator and take vested remainders. *Runyon v. Grubb* (1907), 119 App. Div. 17, 103 N. Y. Supp. 949, *affd.* (1908), 192 N. Y. 586, 85 N. E. 1115.

A vested remainder is created by a will devising lands to a certain person during her life and at her death to go in equal parts to three persons; the death of one of the remaindermen during the continuance of the life estate does not affect the rights of the heirs of such remainderman. *Matter of Yerks* (1905), 107 App. Div. 240, 94 N. Y. Supp. 1121.

Intention of testator governs.—But while the law favors the vesting of legacies as soon as possible after the death of a testator, the intention of the deceased, as deducible from the language and provisions of the will, must be carried out. *Bowditch v. Ayrault* (1893), 138 N. Y. 222, 228, 229, 34 N. E. 514; *Matter of Merri-man* (1895), 91 Hun 120, 126, 36 N. Y. Supp. 131, *affd.* (1897), 154 N. Y. 313, 48 N. E. 537. A very clear intention must be shown in order to defeat the vesting of a remainder created by bequest. *Mitchell v. Knapp* (1889), 54 Hun 500, 504, 8 N. Y. Supp. 40, *affd.* (1891), 124 N. Y. 654, 27 N. E. 413.

The intention of the testator as adduced from the entire will, controls the determination as to whether future interests are vested or contingent. *Shindler v. Robinson* (1912), 150 App. Div. 875, 135 N. Y. Supp. 1056.

Intention to vest an estate inferred by bequest of income to remainderman. *Vanderpoel v. Loew* (1889), 112 N. Y. 167, 181, 19 N. E. 481; *Van Brunt v. Van Brunt* (1888), 111 N. Y. 178, 19 N. E. 60; *Robert v. Corning* (1882), 89 N. Y. 225, 240; *Bushnell v. Carpenter* (1883), 92 N. Y. 270; *Zartman v. Ditmars* (1899), 37 App. Div. 173, 179, 55 N. Y. Supp. 908. By authority of executors to turn over some part of the principal before time fixed for its payment. *Everitt v. Everitt* (1864), 29 N. Y. 39, 49; *Tucker v. Bishop* (1857), 16 N. Y. 405.

When estate if vested is defeated.—A contention that because the deceased beneficiary at any time during his life would have had an immediate right to the possession of a share of an estate upon the ceasing of the precedent estate, and he, therefore, under the above section, took a vested estate which passed by his will, cannot be sustained, since if vested it was subject to be and was defeated by his death during the existence of the trust. *Dougherty v. Thompson* (1901), 167 N. Y. 472, 60 N. E. 760.

For other cases illustrating vested estates or remainders, see *Connolly v. Connolly* (1907), 122 App. Div. 492, 496, 107 N. Y. Supp. 185; *Matter of Haggerty* (1908), 128 App. Div. 479, 112 N. Y. Supp. 1017, *affd.* (1909), 194 N. Y. 550, 87 N. E. 1120; *Billings v. Baker* (1859), 28 Barb. 343, 368; *Matter of Davis* (1895), 91 Hun 53, 36 N. Y. Supp. 822, *affd.* (1896), 149 N. Y. 539, 44 N. E. 185; *Ramsay v. De Remer* (1892), 65 Hun 212, 20 N. Y. Supp. 143; *Drake v. Lawrence* (1879), 19 Hun 112; *Foley v. Foley* (1879), 17 Hun 234; *Williams v. Peabody* (1876), 8 Hun 271; *Hopkins v. Hopkins* (1874), 1 Hun 352; *Mitchell v. Knapp* (1889), 54 Hun 500, 8 N. Y. Supp. 40, *affd.* (1891), 124 N. Y. 654, 27 N. E. 413; *Craver v. Jermain* (1896), 17 Misc. 244, 40 N. Y. Supp. 1056; *Livingston v. Greene* (1873), 52 N. Y. 118, 123; *Delafield v. Schuchardt* (1884), 2 Dem. 435, 438; *Matter of Sutherland* (1888), 14 N. Y. St. Rep. 84; *Levy v. Levy* (1894), 79 Hun 290, 29 N. Y. Supp. 384; *Treoning v. Treoning* (1891), 38 N. Y. St. Rep. 105, 15 N. Y. Supp. 171, *affd.* (1891), 39 N. Y. St. Rep. 426, 15 N. Y. Supp. 171; *Balen v. Youmans* (1892), 20 N. Y. Supp. 657; *Palmer v. Dunham* (1889), 2 Silv. 159, 6 N. Y. Supp. 46; *Minot v. Minot* (1897), 17 App. Div. 521, 45 N. Y. Supp. 554; *Woodruff v. Woodruff* (1911), 72 Misc. 249, 252, 129 N. Y. Supp. 860.

Contingent remainders before the revised statutes were called executory devises. *Beardsley v. Hotchkiss* (1884), 96 N. Y. 201, 213.

A will gave certain land to testator's daughter for life, then to her husband

for life, and after the death of both, to the lawful issue of the daughter then living, in the proportion that they would then inherit from her. It was held that it was the intention of the testator to give the remainder to the issue of the daughter who should be living at her death and that such remainder was contingent. *McGillis v. McGillis* (1896), 154 N. Y. 532, 49 N. E. 145.

Where a testator devised an undivided two-thirds of his realty to trustees to pay the income to his daughter during her life and during the life of her mother, with a provision that upon the death of either of said persons the corpus should be paid over to the survivor, the trustees have legal title only during the lifetime of the one of the two persons named who shall die first, and there is a contingent remainder vesting immediately in possession of the one who survives the death of the other. *Pattison v. Cusack* (1911), 147 App. Div. 428, 131 N. Y. Supp. 795.

Testamentary gift of a remainder to the issue of a certain person living at a life tenant's death is a contingent remainder, where that person was unmarried at testator's death. *Rasquin v. Hamersley* (1912), 152 App. Div. 522, 137 N. Y. Supp. 578, *affd.* (1913), 208 N. Y. 633, 102 N. E. 1112.

Where a will devises lands to the testator's wife for life, and at her death to his children, equally, with a provision that "in case any of my said children shall have died leaving issue, the share of the child so dying shall descend to and vest in his or her issue, and in case of the death of any child without leaving issue, his or her share shall descend to and vest in his or her surviving brothers and sisters," although the lands vested in the testator's children at his death, their title during the life of the life tenant is contingent. *Schwartz v. Rehfuß* (1908), 129 App. Div. 630, 114 N. Y. Supp. 92, *affd.* (1910), 198 N. Y. 585, 92 N. E. 1101.

A remainder is contingent, although the remainderman is in being and ascertained, so long as it remains uncertain whether he will be absolutely entitled to the estate limited to him in remainder, if he lives and such estate continues until all the precedent estates have ceased. *Hawley v. James* (1835), 5 Paige 318, 467, *revd.* (1836), 16 Wend. 61.

Contingent remainder vesting upon death of life tenant. See *Lingsweller v. Hart* (1896), 10 App. Div. 156, 41 N. Y. Supp. 862, *affd.* (1899), 159 N. Y. 543, 54 N. E. 1093.

Uncertainty of event.—Event upon which estate to take effect uncertain. *Leslie v. Marshall* (1860), 31 Barb. 560, 564.

Uncertainty of person.—Persons to whom remainders limited, uncertain. *Mason v. Jones* (1848), 2 Barb. 229, 255; *McGillis v. McGillis* (1896), 11 App. Div. 359, 42 N. Y. Supp. 921, *mod.* (1898), 154 N. Y. 532, 49 N. E. 145. A devise to executors in trust for the life of a widow and on her death to a son and daughter, with remainder over in case of the death of son and daughter to other persons named, creates a contingent remainder in the persons so named. *Schell v. Carpenter* (1906), 50 Misc. 400, 100 N. Y. Supp. 554, *affd.* (1906), 116 App. Div. 914, 101 N. Y. Supp. 1140, *affd.* (1908), 190 N. Y. 552, 83 N. E. 1131.

A conveyance to one "to have and to hold for and during her natural life, and at her death to the heir or heirs of her body her surviving," creates a contingent remainder. *Hall v. La France Fire Engine Co.* (1899), 158 N. Y. 570, 53 N. E. 513, *affg.* (1896), 8 App. Div. 616, 40 N. Y. Supp. 1143.

Other cases illustrating contingent remainders, see *Hennessy v. Patterson* (1881), 85 N. Y. 91, 100; *Samson v. Bushnell* (1898), 25 Misc. 268, 274, 55 N. Y. Supp. 272; *Cogan v. McCabe* (1898), 23 Misc. 739, 52 N. Y. Supp. 48; *Crooke v. County of Kings* (1884), 97 N. Y. 421, 449; *Beardsley v. Hotchkiss* (1884), 96 N. Y. 201, 213; *Purdy v. Hayt* (1883), 92 N. Y. 446, 454; *Dana v. Murray* (1890), 122 N. Y. 604, 617, 26 N. E. 21; *Powers v. Bergen* (1852), 6 N. Y. 358, 360; *Embury v. Sheldon* (1877),

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68 N. Y. 227, 234; *Pickert v. Windecker* (1893), 73 Hun 476, 26 N. Y. Supp. 437; *Crooke v. County of Kings* (1884), 97 N. Y. 421, 449; *Powers v. Bergen* (1852), 6 N. Y. 358, 360; *Newell v. Nichols* (1878), 12 Hun 604, 621, *affd.* (1878), 75 N. Y. 78; *Eells v. Lynch* (1861), 21 N. Y. Super. (8 Bosw.) 465, 480; *Barker v. Southerland* (1886), 6 Dem. 220, 225; *Rasquin v. Hamersley* (1912), 152 App. Div. 522, 527, 137 N. Y. Supp. 378, *affd.* (1913), 208 N. Y. 630, 102 N. E. 1112.

§ 41. **Power of appointment not to prevent vesting.**—The existence of an unexecuted power of appointment does not prevent the vesting of a future estate, limited in default of the execution of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 31.

Revisers' note.—It has seemed to the revisers that the doubts on this subject which have occasionally been referred to since 1830, should be settled by the legislature. The proposed section is in harmony with the weight of authority and with the rest of the law on this subject. See 2 *Smith's Fearn*, 193; *Root v. Stuyvesant* (1836), 18 Wend. 257, 268; *Hawley v. James* (1835), 5 Paige 318, 467, *revd.* (1836), 16 Wend. 61.

Common law is not changed by this section. *Matter of Haggerty* (1908), 128 App. Div. 479, 481, 112 N. Y. Supp. 1017, *affd.* (1909), 194 N. Y. 550, 87 N. E. 1120.

Application of section, see *Connolly v. Connolly* (1907), 122 App. Div. 492, 496, 107 N. Y. Supp. 185; *Townsend v. Townsend* (1899), 27 Misc. 268, 58 N. Y. Supp. 420; *Matter of Mayo* (1912), 76 Misc. 416, 136 N. Y. Supp. 1066.

An estate and remainder limited to take effect upon default in the exercise of a power of appointment is not prevented from vesting by the existence of the power, but takes effect as if no power existed, subject, however, to be divested by an exercise of the power. *Crackanthorpe v. Sickles* (1913), 156 App. Div. 753, 141 N. Y. Supp. 370.

§ 42. **Suspension of power of alienation.**—The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 32; originally revised from R. S., pt. 1, tit. 2, §§ 14-16.

Consolidators' note.—The authors of the General Laws unfortunately changed the Revised Statutes. By their transpositions and omission of the provisions of the statutes, *future estates* only were made void when in conflict with the rule. A trust estate, in the case of an executed trust, is always a *present* estate, and not a *future estate*, and although it may offend against the spirit of the rule against perpetuities there is no provision now on the statute books avoiding it. Subd. 2 (old 1 R. S., 723, § 15) controlled it formerly. But the revisers of the General Laws, in their revision of the statutes, failed to incorporate this subdivision. The

profession has been anxiously expecting some case which would involve this omission. The courts would possibly rectify it by a violent assumption, deciding that no change in the Revised Statutes was intended.

It is suggested that this omission might be corrected by restoring the provisions of the Revised Statutes and inserting the following:

"SUSPENSION OF POWER OF ALIENATION.

1. Every future estate which shall suspend the absolute power of alienation for a longer period than is prescribed in this article shall be void in its creation. Such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

2. The absolute power of alienation, shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate, except in the single case mentioned in the next subdivision.

3. A contingent remainder in fee, may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency, by which the estate of such persons may be determined before they attain their full age.

4. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority."

The rule against perpetuities, expressed in this section has been lately held, since L. 1903, ch. 701, to have no further application to charitable uses: *Allen v. Stevens*, 161 N. Y. 122; *Matter of Griffin*, 167 N. Y. 71, 81. This being so, it should be so plainly stated in a statute consolidating the laws relating to charities. At common law, charitable, or public, uses were not subject to the rule against perpetuities, except as to the time of vesting in possession, which could not be postponed beyond the legal limit. *Marsden on Perpetuities*, 24, 295; *Challis on Real Property*, 157. This was a wise exception recognized in this state, and it should be continued. *Rose v. Rose*, 4 Abb. Ct. App. Dec. 108. The phrase "except as to the time of vesting in possession" is the technical one employed, in the law relating to charitable uses, to express that such uses must vest within the time limit prescribed by the rule against perpetuities.

It is suggested that this exception might be stated by inserting the following:

"But this section does not apply to the uses mentioned in §§ 113, 114, and 115 of this chapter, except as to the time of vesting in possession."

Revisers' note.—Unchanged in substance, except that the last sentence, which is declaratory of existing law, is new. See *Lang v. Ropke* (1852), 5 Sandf. 369.

Reference.—Suspension of ownership of personal property, *Personal Property Law*, § 11.

By the common law the absolute ownership of real property could be suspended during the continuance of a life or any number of lives in being at the creation of the estate, and of twenty-one years after, and nine months in addition; for the birth of a posthumous child. *Stewart v. McMartin* (1849), 5 Barb. 438, 445.

Application of section.—The restrictions of this section are equally applicable to present and to future estates. *Yates v. Yates* (1850), 9 Barb. 324, 344. Estates given to charitable uses must vest within the time prescribed by law. *Rose v. Rose* (1863), 4 Abb. Ct. App. Dec. 108, 112; *Yates v. Yates* (1850), 9 Barb. 324, 347. See also *Bigelow v. Tilden* (1896), 18 Misc. 689, 691, 43 N. Y. Supp. 858, mod. (1900), 52 App. Div. 390, 65 N. Y. Supp. 140; *Leonard v. Burr* (1858), 18 N. Y. 96, 107. But see *Consolidators' note*, ante.

Distinction as to suspension of realty and personalty.—The only difference made by the statute between limitations of future estates in lands and future interests in personal property, consists in the provision as to the time of suspension. As to

real estate, it is two lives in being and a minority; as to personalty, the limit is absolute to two lives in being. *Manice v. Manice* (1871), 43 N. Y. 303, 382.

No suspension results where there are persons in being who can convey. *McGillis v. McGillis* (1896), 11 App. Div. 359, 42 N. Y. Supp. 921, modf. (1898), 154 N. Y. 532, 49 N. E. 145; *Norris v. Beyea* (1855), 13 N. Y. 273, 289; *Sawyer v. Cubby* (1895), 146 N. Y. 192, 40 N. E. 869; *Williams v. Montgomery* (1896), 148 N. Y. 519, 43 N. E. 57; *Haynes v. Sherman* (1889), 117 N. Y. 433, 22 N. E. 938; *Morton v. Morton* (1850), 8 Barb. 18, 22; *Murphy v. Whitney* (1894), 140 N. Y. 541, 546, 35 N. E. 930, 24 L. R. A. 123, affg. (1893), 69 Hun 573, 23 N. Y. Supp. 1134; *Hawley v. James* (1836), 16 Wend. 61, 121.

A devise to persons named for life and to their survivor or survivors, remainder to certain benevolent societies, does not suspend the power of alienation, if the life tenants and remaindermen by joining in a deed can convey an absolute fee. *Thieler v. Rayner* (1906), 115 App. Div. 626, 100 N. Y. Supp. 993, affd. (1907), 190 N. Y. 546, 83 N. E. 1133.

The duration of the suspension must be measured by existing lives and not by a fixed period. The statute is plain in this respect and the cases are uniform in so holding. *Finch v. Wilkes* (1896), 17 Misc. 428, 430, 41 N. Y. Supp. 227. See also *Field v. Field's Executors* (1847), 4 Sandf. Ch. 528, 546; *Krah v. Grenier* (1873), 1 T. & C. 388, 391; *Tucker v. Tucker* (1851), 5 N. Y. 417; *Beekman v. Bonsor* (1861), 23 N. Y. 316; *Underwood v. Curtis* (1891), 127 N. Y. 523, 541, 28 N. E. 585; *Brandt v. Brandt* (1895), 13 Misc. 431, 34 N. Y. Supp. 684. See, generally, *Ward v. Ward* (1887), 105 N. Y. 68, 11 N. E. 373; *Knox v. Onativa* (1872), 47 N. Y. 389; *Dana v. Murray* (1890), 122 N. Y. 604, 26 N. E. 21; *Benedict v. Webb* (1885), 98 N. Y. 460; *Colton v. Fox* (1876), 67 N. Y. 348.

The duration of a trust, whether in real or personal property, must be limited to lives in being, and no term of years, however brief, will satisfy the statute. *Staples v. Hawes* (1898), 24 Misc. 475, 477, 53 N. Y. Supp. 860, affd. (1899), 39 App. Div. 548, 57 N. Y. Supp. 452.

A will which provides that the income of an estate was to be paid to the testator's widow during her lifetime, and at her death divides the estate into seven parts, five of which vest immediately, and one of the two remaining parts to be held in trust by the executors, who are to pay the income to the testator's daughter to be used "during the minority of my grandchildren," in the support, etc., of such grandchildren, "and when they attain the age of twenty-one years to divide such share among such grandchildren equally, share and share alike," unlawfully suspends the power of alienation. *Bindrim v. Ullrich* (1901), 64 App. Div. 444, 72 N. Y. Supp. 239.

Limitation need not be upon lives of beneficiaries.—*Bailey v. Bailey* (1884), 97 N. Y. 460, 468.

Limitation for absolute and definite fixed period.—A suspension or accumulation for an absolute and definite fixed period, or for an indefinite period not measured by human lives in being, is in violation of the statutes. *Wells v. Wells* (1892), 24 N. Y. Supp. 874, 877. No absolute term, however short, can be sustained. *Hones' Executors v. Van Schaick* (1838), 20 Wend. 564, 566.

Limitation for absolute term in lieu of life. See *Rice v. Barrett* (1886), 102 N. Y. 161, 6 N. E. 898; *Garvey v. McDevitt* (1878), 72 N. Y. 556; *De Kay v. Irving* (1846), 5 Den. 646; *Yates v. Yates* (1850), 9 Barb. 324; *Killam v. Allen* (1868), 52 Barb. 605; *Moore v. Moore* (1866), 47 Barb. 267, affd. (1867), 6 Alb. L. J. 173.

Term fixed by years.—A limitation of a trust estate for an arbitrary period of time, such as fifty years, is valid, provided a termination at an earlier period is called for by the expiration of two lives in being at the creation of the trust. *Schermerhorn v. Cotting* (1892), 131 N. Y. 48, 58, 29 N. E. 980.

A will which devises lands to executors in trust for a period of nineteen years

from the date of the will, the net profits to be paid to the testator's wife and daughter "during said nineteen years or during the lives" of the wife and daughter "and the survivor of them," does not unlawfully suspend the power of alienation. A trust may be limited for an arbitrary period of time provided the termination at an earlier period is called for by the expiration of two lives in being at the creation of the trust. But under the will aforesaid the trust ends with the expiration of the nineteen years, although the persons upon whose lives the trust is limited survive said period. *Anthony v. Van Valkenburgh* (1912), 154 App. Div. 380, 139 N. Y. Supp. 599.

The statute against perpetuities deals only with the duration of the trust or the lawful suspension of the power of alienation. The suspension may be made to terminate at an earlier period than that covered by two lives in being at the death of the testator, and it is no objection to the validity of such trust that the instrument fixed a definite period provided that fixed period must terminate within two lives. For instance, such fixed period may be when all three children of a testator who are infants at the date of his death attain the age of twenty-one years, provided this is within another period of duration the extreme limit of which is a life in being at the creation thereof as for instance that of the testator's wife. It is not necessary that all of the beneficiaries of the trust or even that any of them should be identical with those whose lives measure the duration of the trust term. These lives may be those of persons who are total strangers to the trust object. A will giving property in trust, income payable to K for the use and benefit of her five children and providing that as each child arrives at majority, the trustee shall pay to her \$1,000 of the principal, the share of the principal of any child dying before majority to be paid on the happening of that event to K, and further providing that at the expiration of five years from the majority of the youngest of said children, or from her death within that period, the trustee shall pay the whole trust estate to K, if living, and if dead to the live heirs of her body, does not unlawfully suspend the power of alienation or the absolute ownership of personal property, for in any event the trust cannot extend beyond the lives of K and her youngest daughter. Such construction will be given although the testator stated that the trust was to determine "from" death of the youngest daughter instead of at her death, for the latter was his evident intention. In construing such a provision the intent of the testator will be followed if possible to carry the trust into effect. *Kahn v. Tierney* (1909), 135 App. Div. 897, 120 N. Y. Supp. 663, *affd.* (1911), 201 N. Y. 516, 94 N. E. 1095.

A will creating a trust fund and vesting in the trustee title to property for a period of three years after the testator's death is void because the duration thereof was made to depend upon a term of years and not upon lives. *McGuire v. McGuire* (1903), 80 App. Div. 63, 80 N. Y. Supp. 497.

A provision for a suspension of alienation for fifteen years is illegal and void. But where a testator gives to trustees in trust certain property to a nephew and authorizes the sale of the property, "at the expiration of fifteen years after my decease, or upon the death of my nephew, whichever event shall last occur," it will be deemed to create a life estate for the nephew, and the limitation of fifteen years may be disregarded. *Matter of Murray* (1902), 75 App. Div. 246, 78 N. Y. Supp. 165.

The carrying out of a direction to the executors to sell certain real property at such time within five years after testator's death as the executors may be able to obtain the sum of \$50,000 therefor, would unlawfully suspend the power of alienation, the direction being not simply advisory, but amounting to a limitation. *Stewart v. Woolley* (1907), 121 App. Div. 53, 106 N. Y. Supp. 99.

A will devising lands in trust, and income to a son "for a term of five years," the remainder to be held in trust for his benefit, and providing that if at the end

of five years it shall be found that the son has abstained from intoxicating liquors, the executors may turn over the property to him with the surplus, but continue to hold the same in their discretion, with a further provision that in case the said son dies without issue, the land so devised for his benefit shall go to other children surviving, does not unlawfully suspend the power of alienation; although the trust directs the executors to hold for five years, still it must end on the death of the beneficiary and is therefore valid. *Keenan v. Keenan* (1907), 122 App. Div. 435, 107 N. Y. Supp. 152.

A testator, after making certain bequests, devised the remainder of his property in trust for the benefit of his wife and children, and provided that the corpus of his estate should not be used unless necessary for their support. The 3d subdivision of his will provides, in part, as follows: "The trust created by this clause of my will shall cease and determine at the expiration of five years from the date of my death." He further provided that the trust property should, at the expiration of said five years from the time of his death, be distributed, one-third thereof to his wife and the remaining two-thirds in equal parts between his three children. It was also provided that if any of his children should die with issue before the expiration of the five years their share should descend to such issue, and if any of his children should die without issue their share should descend to the survivors, including his widow. It was held, that the language of the trust construed with the other provisions of the will clearly indicates the testator's intent that his entire estate should not be distributed until the expiration of five years after his death; that the trust is invalid as suspending the power of alienation for a period not measured by one or two lives in being at the death of the testator, and that the contingent limitations over at the end of the trust period of five years are also invalid. *Smith v. Smith* (1912), 154 App. Div. 313, 139 N. Y. Supp. 124.

Suspension until the performance of some act.—See *Tilden v. Green* (1891), 130 N. Y. 29, 28 N. E. 880, 14 L. R. A. 33; *Booth v. Baptist Church* (1873), 126 N. Y. 215, 28 N. E. 238; *People v. Simonson* (1891), 126 N. Y. 299, 27 N. E. 380; *Holmes v. Mead* (1873), 52 N. Y. 332; *Purdy v. Hayt* (1883), 92 N. Y. 446, 451; *Williams v. Montgomery* (1886), 148 N. Y. 519, 526, 43 N. E. 57; *Sawyer v. Cubby* (1895), 146 N. Y. 196, 40 N. E. 869; *Mott v. Ackerman* (1883), 92 N. Y. 539, 550; *Ham v. Van Orden* (1881), 84 N. Y. 257.

Gift, limited upon the condition of raising a certain sum within five years, is void. *Rose v. Rose* (1863), 4 Abb. Ct. App. Dec. 108, 117.

Indefinite duration.—A trust deed which does not specify the time of the duration of the estate created thereby is void under this section. *Gueutal v. Gueutal* (1906), 113 App. Div. 310, 98 N. Y. Supp. 1002.

Contingent remainder in fee may be created on a prior remainder in fee to take effect in the event that the persons to whom the first remainder is limited died under the age of twenty-one years. See *Fowler v. Depau* (1857), 26 Barb. 224, 233; *Radley v. Kuhn* (1884), 97 N. Y. 26.

Suspension during minorities.—See *Benedict v. Webb* (1885), 98 N. Y. 460; *Savage v. Burnham* (1858), 17 N. Y. 561. Minority of person not in being in addition to two lives in being. *Woodgate v. Fleet* (1876), 64 N. Y. 566. For the minorities of more than two lives in being. *Jennings v. Jennings* (1852), 7 N. Y. 547; *McSorley v. McSorley's Executors* (1846), 4 Sandf. Ch. 414.

A trust for the minorities of testator's four children violates the rule against perpetuities, and cannot be saved by a power of sale which, when exercised, does not terminate the trust because the period of distribution is otherwise fixed, *Whitefield v. Crissman* (1908), 55 Misc. 468, 106 N. Y. Supp. 930, *affd.* (1890), 123 App. Div. 233, 108 N. Y. Supp. 110.

The suspension contained in a will until a minor who is specified should merge

from minority or should sooner die is valid, as a suspension for a period not longer than one life in being. *Matter of Mikantowicz* (1908), 60 Misc. 273, 113 N. Y. Supp. 278.

There is no unlawful suspension of the power of alienation where the duration of a trust is measured by the life or remarriage of the widow and the minority of the testator's youngest child. There being nothing to suggest that the period should endure during the majority of the youngest child who may survive his minority, the trust is to be deemed to terminate upon the coming of age or the earlier death of the youngest child of the testator, and is therefore measured by two lives in being within the authorities. *Schreiner v. Schreiner* (1909), 63 Misc. 601, 118 N. Y. Supp. 608.

It is well settled that the suspension of the power of alienation or right of ownership during a minority is not equivalent to a suspension for a fixed period, but amounts at most to a suspension as to but part of a life, because the law reads into such a suspension the alternative condition that the suspension shall terminate if the life chosen as a standard of duration should end before the expiration of the minority. When it is clear, however, that it was the intention of the testator that suspension should continue for a period equivalent to a minority, and not be terminable by death during that period then the rule would be otherwise. *Matter of Lally* (1910), 136 App. Div. 781, 121 N. Y. Supp. 467, *affd.* (1910), 198 N. Y. 608, 92 N. E. 1089.

And see, generally, *Smith v. Edwards* (1882), 88 N. Y. 92; *Rice v. Barrett* (1886), 102 N. Y. 161, 6 N. E. 898; *Dodge v. Pond* (1861), 23 N. Y. 69; *Harriot v. Harriot* (1898), 25 App. Div. 245, 248, 49 N. Y. Supp. 447; *Post v. Hover* (1859), 30 Barb. 312, *affd.* (1865), 33 N. Y. 593; *Taylor v. Gould* (1851), 10 Barb. 398; *James v. Beasley* (1878), 14 Hun 520; *Stehlin v. Stehlin* (1893), 67 Hun 110, 22 N. Y. Supp. 40; *Haug v. Schumacher* (1900), 50 App. Div. 562, 566, 64 N. Y. Supp. 310, *modf.* (1901), 166 N. Y. 506, 60 N. E. 245.

Until youngest of children arrive at certain age.—A trust created until the youngest of said children shall attain the age of twenty-five years, should be construed to mean that the trust should terminate when the youngest child living at the testator's death should attain the age of twenty-five years, but the trust becomes impossible by reason of the prior death of such child. When so construed the trust is valid. *Coston v. Coston* (1907), 118 App. Div. 1, 103 N. Y. Supp. 307.

A trust with directions to apply the income of testator's real property "until the youngest of my said children shall have attained the age of twenty-five years" is valid. Such a trust is for the benefit of a class measured by a life or a less time. It terminates absolutely upon the youngest child reaching the age of twenty-five years, and if he dies before that time the trust term is ended by his death. *Burke v. O'Brien* (1906), 115 App. Div. 574, 100 N. Y. Supp. 1048.

Where provision is made that property shall be divided among residuary legatees "after the youngest child of them shall have attained the age of twenty-one years" imports simply a suspension during the minority and is valid. Such a provision must be construed as of the time of the testator's death. *Jacoby v. Jacoby* (1907), 188 N. Y. 124, 80 N. E. 676.

Until the last of children become of age.—A devise of the use of lands to a person "until the last of my children shall become of age," when the property shall be sold and divided equally between the children, does not suspend the power of alienation. The children take vested remainders and may join in the conveyance. *Matter of Bray* (1907), 118 App. Div. 533, 102 N. Y. Supp. 989.

Suspension until corporation is formed.—A suspension of the power of alienation is permissible during a period necessary to form a corporation to take a gift not exceeding two lives in being at the time of the death of the testator; such a gift is valid as an executory devise or bequest. *St. John v. Andrew's Institute*

(1907), 117 App. Div. 698, 102 N. Y. Supp. 808, modf. (1908), 191 N. Y. 254, 83 N. E. 981.

Remainder to corporation to be formed. See *People v. Simonson* (1891), 126 N. Y. 299, 27 N. E. 380; *Cruikshank v. Home for the Friendless* (1889), 113 N. Y. 337, 351, 21 N. E. 64, 4 L. R. A. 140; *Burril v. Boardman* (1871), 43 N. Y. 254; *Shipman v. Rollins* (1885), 98 N. Y. 311, 328; *Lougheed v. Baptist Church* (1891), 129 N. Y. 211, 29 N. E. 249, 14 L. R. A. 410; *Adams v. Perry* (1871), 43 N. Y. 487; *Cottman v. Grace* (1889), 112 N. Y. 299, 19 N. E. 839, 3 L. R. A. 145; *Fosdick v. Hempstead* (1891), 125 N. Y. 581, 26 N. E. 801, 11 L. R. A. 715; *Read v. Williams* (1891), 125 N. Y. 560, 26 N. E. 730; *Jessup v. Pringle Memorial Home* (1899), 27 Misc. 427, 59 N. Y. Supp. 207, affd. (1900), 47 App. Div. 662, 62 N. Y. Supp. 308.

Suspension by will under power of appointment.—Where a testator by his will created a trust in real property for the benefit of a daughter, to continue during the existence of two lives in being, said property upon the termination of the trust to go to the "appointees by deed or by will" of the said daughter, an attempt by the daughter to create by her will a trust continuing the suspension of the power of alienation for another life is violative of the statutes against perpetuities. *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, affg. (1890), 120 App. Div. 347, 104 N. Y. Supp. 1092, affg. (1907), 52 Misc. 407, 102 N. Y. Supp. 1137.

Alternate limitations are valid, provided that the limitation or the period of suspension which actually takes effect or is adopted, does not of itself offend against the statute. *Cowen v. Rinaldo* (1894), 8 Misc. 115, 28 N. Y. Supp. 369, revd. (1894), on other grounds 82 Hun 479, 31 N. Y. Supp. 554.

Separate trusts.—A devise and bequest of a residuary estate in trust for specific uses during the lives of testator's four children will, where the context of the will permits, be construed as creating four separate and distinct trusts for the period of one life in being. *Bascom v. Weed* (1907), 53 Misc. 499, 105 N. Y. Supp. 459. Thus, having created a trust term which must end within the period required by the statute, the testator may provide that the income shall be paid during that time to A. for life, remainder to B. for life, remainder to C. for life, and so on for as many different lives as he chooses, provided the whole trust term must end with the death of the survivor of the two lives. *Schermerhorn v. Cotting* (1892), 131 N. Y. 48, 58, 29 N. E. 980.

Trusts will be held to be severable and distinct so as not to unlawfully suspend the power of alienation, especially if the validity of the will depends upon it. *Beatty v. Godwin* (1908), 127 App. Div. 98, 102, 111 N. Y. Supp. 373, revd. (1910), 198 N. Y. 35, 91 N. E. 288

It is not necessary that a testator actually sever the trust fund in the case of several trusts carved out of such fund. It suffices that each trust can be made distinct, and each will be considered alone on the question of illegal suspension. *Post v. Bruere* (1908), 127 App. Div. 250, 252, 111 N. Y. Supp. 51.

Trust estate divided among several beneficiaries, does not create an unlawful suspension. See *Moore v. Hegeman* (1878), 72 N. Y. 376; *Tiers v. Tiers* (1885), 98 N. Y. 568. But a single trust with several beneficiaries suspends the power of alienation. *Walsh v. Waldron* (1892), 63 Hun 315, 17 N. Y. Supp. 829, affd. (1892), 135 N. Y. 650, 32 N. E. 647.

Estate held in tenancy in common, not in joint tenancy.—Where the testator gave to each of three relatives a pecuniary legacy to be held in trust for them by the trustee and directing that the income thereof should be paid only to the beneficiaries; that each of them so electing should have a portion of the trust funds with which to purchase and furnish a home to be held by her in her own right free from any control whatsoever and that the remainder of the principal should remain in trust as a protection in old age, a tenancy in common results,

the beneficial interests of the legatees being in reality divided, although the aggregate estate is directed to be held *in solido*. There being then a separate trust as to each of such beneficiaries to continue for the life of each there is no undue suspension of the power of alienation. *Matter of Hoffman* (1909), 65 Misc. 126, 121 N. Y. Supp. 100, *affd.* on rearg. (1910), 67 Misc. 334, 124 N. Y. Supp. 680, *affd.* (1910), 140 App. Div. 121, 124 N. Y. 1089, *mod.* (1911), 201 N. Y. 247, 94 N. E. 990.

A testatrix devised certain real property to her five children for life and provided that upon the death of any of such children those surviving should inherit the life interest of the deceased share and share alike, and that, upon the death of the last surviving child, the property ceasing to be a life interest should pass to her grandchildren share and share alike. The testatrix left her surviving the five children and certain grandchildren. It was held, that the will was not void in its entirety as unlawfully suspending the power of alienation. *Wells v. Rowland* (1913), 155 App. Div. 354, 140 N. Y. Supp. 341.

An agreement by tenants in common not to partition or sell lands without the consent of all does not unlawfully suspend the power of alienation. *Buschmann v. McDermott* (1913), 154 App. Div. 515, 139 N. Y. Supp. 314.

Effect of power of sale.—The absolute ownership and power of alienation is not suspended merely because the executor may require a period of time not measured by lives in which to execute the power of sale by a conversion of the land into money. *Deegan v. Wade* (1895), 144 N. Y. 573, 576, 39 N. E. 692. See also *Durfee v. Pomeroy* (1898), 154 N. Y. 583, 595, 49 N. E. 132; *Hope v. Brewer* (1892), 136 N. Y. 126, 135, 32 N. E. 558, 18 L. R. A. 458; *Blanchard v. Blanchard* (1875), 4 Hun 287, 289, *affd.* (1877), 70 N. Y. 615; *Chandler v. N. Y. Elev. R. R. Co.* (1898), 34 App. Div. 305, 307, 54 N. Y. Supp. 341.

No suspension of the power of alienation arises merely from the possible non-action of executors to whom a power of sale is given. *Keyser v. Mead* (1907), 53 Misc. 114, 103 N. Y. Supp. 1091.

A power of sale given to trustees, with a provision that they shall not be compelled to exercise it until the lapse of five years from the date of the will, does not suspend the power of alienation. *Henderson v. Henderson* (1889), 113 N. Y. 1, 20 N. E. 814. A will providing as follows: "I enjoin my executors not to sell any of the real estate under three years unless sold to advantage; sold on time if to advantage" does not suspend the power of alienation. *Stewart v. Hamilton* (1885), 37 Hun 19.

A trust does not create a void suspension of the power of alienation, where the trustee may convey a fee at any time. *Smith v. Farmer Type Founding Co.* (1897), 16 App. Div. 438, 445, 45 N. Y. Supp. 192; *Matteson v. Armstrong* (1877), 11 Hun 245. The fact that the consent of other parties is necessary does not change the rule. *Stolber v. Stolber* (1899), 40 App. Div. 156, 57 N. Y. Supp. 916. But where the persons entitled to the proceeds of a sale are not ascertainable until the sale is made, the power alienation is suspended. *Trowbridge v. Metcalf* (1896), 5 App. Div. 318, 39 N. Y. Supp. 241, *affd.* (1899), 158 N. Y. 682, 52 N. E. 1126.

A trust which would be otherwise void as suspending the power of alienation for more than two lives in being is not made valid because of there being given to the trustee power to sell the trust property, the proceeds of such sale remaining subject to the execution of the trust. *Brewer v. Brewer* (1877), 11 Hun 147, *affd.* (1878), 72 N. Y. 603.

The election to take dower.—When a trust is void for unlawfully suspending the power of alienation it cannot be made valid by the widow, who was one of the beneficiaries, electing to take dower instead of her beneficiary interest. *People's Trust Co. v. Flynn* (1906), 113 App. Div. 683, 99 N. Y. Supp. 979, *revd.* (1907), 188 N. Y. 385, 80 N. E. 1098.

Valid suspension.—A devise for life and thereafter for the benefit of the wife of the life tenant and his issue does not violate the statute. There was no intention thus expressed to create a trust after the death of the life tenant for the provisions should be construed to require a final distribution of the estate at that time. *Mee v. Gordon* (1907), 187 N. Y. 400, 80 N. E. 353, revg. (1905), 104 App. Div. 520, 93 N. Y. Supp. 675.

Trust to pay annuity to widow for life and the balance of the income to the children during the lives of two daughters of the testator, is a suspension of the power of alienation only for two lives and is therefore valid. *People's Trust Co. v. Flynn* (1907), 188 N. Y. 385, 80 N. E. 1098, revg. (1906), 113 App. Div. 683, 99 N. Y. Supp. 979.

A trust for the lives of two sons which is limited upon a life estate to the father with an ultimate remainder over to the children of the sons is not an unlawful suspension. The lives to be considered in determining the period of suspension are those of the two sons. *Matter of Hurlbut* (1906), 51 Misc. 263, 100 N. Y. Supp. 1098.

Where testatrix gave her entire estate to her executors in trust to divide it into equal parts with direction to pay the income of two parts to her husband for life and upon his death to her sister for life, and upon her death to divide the principal of said two parts among her surviving children as they respectively attained their majority, there is neither a suspension of the absolute ownership of personal property for more than two lives in being nor of the absolute power of alienation of real estate in contravention of this section of the Real Property Law, and the trust so created is not invalid. *Matter of Gulick* (1916), 96 Misc. 410, 160 N. Y. Supp. 525.

A deed placing lands in trust until such time as the survivor of two beneficiaries in being at the time of the creation of the trust shall die does not violate the statute against perpetuities, even though it provide that at the termination of the trust the lands shall be divided among the heirs of the beneficiaries named. *Ogilby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860, affd. (1911), 202 N. Y. 614, 96 N. E. 1123.

A clause of a will which provided: "My said wife to take the lands devised to her in and by the third clause of this, my will, for life and in lieu of dower and thirds rights, and at her decease I give, devise and bequeath the said lands to my said son, * * *, if living, if not living but leaving a child or children, then to said child or children, or if not living and no child or children living, then to my grandchildren named in the eighth clause of this, my will, and as they would take thereunder, whomsoever takes at the decease of my said wife, to have and hold the same, his heirs and assigns forever" is valid as on the death of the widow there was a person or persons in being who could give complete title. *Vandenburgh v. Vandenburgh* (1914), 85 Misc. 131, 147 N. Y. Supp. 244.

Trusts held not to suspend the power of alienation. *Pryer v. Pryer* (1911), 145 App. Div. 928, 126 N. Y. Supp. 393, 130 N. Y. Supp. 1126, affd. (1913), 207 N. Y. 710, 101 N. E. 1118.

See, generally, *Case v. Case* (1896), 16 Misc. 393, 39 N. Y. Supp. 530; *Wilson v. White* (1888), 109 N. Y. 59, 15 N. E. 749; *Surdam v. Cornell* (1889), 116 N. Y. 305, 22 N. E. 450; *Monarque v. Monarque* (1880), 80 N. Y. 320; *Bulkley v. Depeyster* (1841), 26 Wend. 21, 27; *McGrath v. Van Stavoren* (1880), 8 Daly 454; *Brevoort v. Townsend* (1915), 91 Misc. 143, 154 N. Y. Supp. 1031.

Invalid suspension.—A will, placing the entire estate in trust for the benefit of four children "the income of such portion of the property as may be necessary for their maintenance to be used until all shall have reached their majority" at which time the residue is to be divided share and share alike with the power in

the trustees to sell and dispose of any of the property in their discretion, unlawfully suspends the power of alienation. The illegality is not cured by the power of sale, it not being coupled with the power to divide the proceeds before the termination of the trust. *Whitefield v. Crissman* (1908), 123 App. Div. 233, 108 N. Y. Supp. 110.

A trust in favor of the testator's wife for life, and after her death in favor of his brother and sister in equal shares for life, and upon the death of either in favor of the survivor of them for life, with remainder over to a nephew and a niece in fee, is invalid. *Simpson v. Trust Co.* (1908), 59 Misc. 96, 112 N. Y. Supp. 155, *affd.* (1908), 129 App. Div. 200, 113 N. Y. Supp. 370, *affd.* (1910), 197 N. Y. 586, 91 N. E. 1120.

A devise of the use of land to the testator's three daughters for their lives, and to the survivor of them and after their deaths in fee to another, in case he survived them, but in case of his death before that of the last survivor of the testator's three daughters, then in fee to such last survivor is void. *Sanford v. Goodell* (1894), 82 Hun 369, 31 N. Y. Supp. 490.

Where a testator leaves a house and lot in trust for the use of any of his daughters who shall remain unmarried or who may be or who may become widows, and provides that upon the death of his last surviving daughter such trust shall cease and determine, and then gives and devises said house and lot unto the children of daughters who shall be living at that time, with the exception of a son of one daughter, and at his death eight daughters and a number of children of daughters survive, and other children may be borne, the trust is void, as it suspends the absolute power of alienation for a longer period than during two lives in being, in violation of this section. *Benedict v. Salmon* (1917), 177 App. Div. 385, 163 N. Y. Supp. 846.

Where a nonresident testatrix devised her real estate to trustees with direction to pay the income thereof to her three daughters during their respective lives and upon the death of any of them to pay said income to her issue, if any, otherwise to be paid to her surviving sisters, and upon the death of the daughters without issue the property was to be disposed of by the last will and testament of the daughter last dying, and none of the daughters had issue at the death of testatrix, the trust is void as suspending the power of alienation for more than two lives in being. *Matter of Turner* (1913), 82 Misc. 25, 143 N. Y. Supp. 692.

An unincorporated church cannot take lands by devise, and a devise of lands to trustees to be conveyed to such church if it becomes incorporated within one year and eleven months from the time of testator's death is an attempt to effect an unlawful suspension of the power of alienation and is invalid. The direction to the trustees contained in the same will to convey to the incorporated church of which the former unincorporated church was a branch or mission at the end of two years, if the mission church did not become incorporated within the period mentioned, does not create a trust for the benefit of the incorporated church; but, the former church not having been incorporated and, therefore, unable to take at the testator's death, no title passes to the trustees but the title vests at once in the incorporated church. *Washburn v. Acome* (1911), 74 Misc. 301, 131 N. Y. Supp. 963, *affd.* (1912), 151 App. Div. 948, 136 N. Y. Supp. 1150.

The taint of unlawful suspension of absolute ownership may not be communicated to the other provisions of a will. *Matter of Lang* (1911), 72 Misc. 589, 131 N. Y. Supp. 991.

See, generally, *In re Marcial's Estate* (1891), 37 N. Y. St. Rep. 569, 15 N. Y. Supp. 89; *Simpson v. English* (1874), 1 Hun 559, 4 T. & C. 80, 82; *Morris v. Porter* (1876), 52 How. Pr. 1, 7; *Van Schuyver v. Mulford* (1875), 59 N. Y. 426, 431; *Hobson v. Hale* (1884), 95 N. Y. 588, 610; *Shipman v. Fanshaw* (1885), 98 N. Y. 311.

Validity of suspension; when and how determined.—Whether or not a will vio-

lates this section must be determined as of the date of the testator's death. The violation of the statute is not cured by the happening of fortuitous circumstances by reason of which no illegal suspension is actually effected. *Morton Trust Co. v. Sands* (1907), 122 App. Div. 691, 107 N. Y. Supp. 698, revd. on other grounds (1909), 195 N. Y. 28, 87 N. E. 783.

Where a trust attempted to be created in a will is void because suspending the absolute power of alienation for more than two lives in being, the fact that the persons named died during the testator's life does not cure the invalidity of the devise. *O'Dell v. Youngs* (1882), 64 How. Pr. 56.

If the condition or limitation is such that it may by any possibility limit the power of alienation or suspend it for a period of more than two lives in being a the time of the creation of the estate, the grant of the estate sought to be limited is inoperative and void. *Sanford v. Goodell* (1894), 82 Hun 369, 371, 31 N. Y. Supp. 490; see also *Coster v. Lorillard* (1835), 14 Wend. 265; *Lee v. Tower* (1891), 124 N. Y. 370, 26 N. E. 943; *Tucker v. Tucker* (1851), 5 N. Y. 408, 416.

Every limitation is void by which the suspension of the power of alienation will not necessarily, under all possible circumstances, terminate within the prescribed period. It is not enough that it may so terminate. *Schettler v. Smith* (1869), 41 N. Y. 328, 334.

The intent of the testator in creating the estate himself determines whether the power of alienation was unlawfully suspended. *Coston v. Coston* (1907), 118 App. Div. 1, 103 N. Y. Supp. 307. And where the intention of the testator as to the term of a limitation upon the absolute power of alienation is left uncertain and doubtful, that construction should be adopted which is nearest in accord with public policy. *Chwatal v. Schreiner* (1896), 148 N. Y. 683, 690, 43 N. E. 166.

Agreement of parties.—The power of alienation cannot be unlawfully suspended by agreement of parties. *Church v. Wilson* (1912), 152 App. Div. 844, 137 N. Y. Supp. 1002, *affd.* (1913), 209 N. Y. 553, 103 N. E. 1122.

Effect of void provisions as to suspension of power of alienation.—Limitations whereby a testator attempts to effect an illegal suspension may be disregarded if the primary disposition of his estate be in accordance with the rules of law. *Oxley v. Lane* (1866), 35 N. Y. 340; *Henderson v. Henderson* (1889), 113 N. Y. 1, 20 N. E. 814; See, generally, *Post v. Hover* (1865), 33 N. Y. 593, 598; *Holmes v. Mead* (1873), 52 N. Y. 332; *Shipman v. Rollins* (1885), 98 N. Y. 311; *Wood Gate v. Fleet* (1871), 44 N. Y. 1; *Brady v. Hanson* (1910), 68 Misc. 198, 123 N. Y. Supp. 645.

A codicil which is invalidated because containing a direction to hold and invest both the principal and income of the residuary estate for a definite period of two years after the testator's death does not affect the power of sale nor the existence of a permanent trust created by the will, since under the terms of the will the codicil can be construed to only affect the time of the inception of the trust, and the invalid provisions therein can be expunged without making any change in the testator's plan for the disposition of his residuary estate. *Smith v. Chesebrough* (1903), 176 N. Y. 317, 68 N. E. 625, *revd.* (1903), 82 App. Div. 578, 81 N. Y. Supp. 570.

Where a will creates a trust for a definite period of five years with a vested remainder after the expiration of said period, the trust provision, being invalid as not measured by two lives in being, may be disregarded and the vested remainder given effect upon the death of the testator instead of at the expiration of the five-year period. A vested gift, otherwise valid, will not fail merely because it is limited to take effect at the expiration of a trust which is void under the statute. *Matter of Berry* (1913), 154 App. Div. 509, 139 N. Y. Supp. 186, *affd.* (1913), 209 N. Y. 540, 102 N. E. 1099.

Suspension by means of a trust.—See *Roe v. Vingut* (1889), 117 N. Y. 204, 22 N. E.

933; *Hopkins v. Kent* (1895), 145 N. Y. 363, 40 N. E. 4; *Downing v. Marshall* (1861), 23 N. Y. 366; *Hillen v. Iselin* (1895), 144 N. Y. 379, 39 N. E. 368; *Robert v. Corning* (1882), 89 N. Y. 225; *Allen v. Allen* (1896), 149 N. Y. 280, 43 N. E. 626; *Heerman v. Robertson* (1876), 64 N. Y. 332, 353; *Robert v. Corning* (1868), 39 N. Y. 225; *Ward v. Ward* (1887), 105 N. Y. 68, 11 N. E. 373; *Buchanan v. Little* (1896), 6 App. Div. 527, 39 N. Y. Supp. 671, mod. (1897), 154 N. Y. 147, 47 N. E. 970; *Matter of Charlier* (1897), 22 App. Div. 71, 47 N. Y. Supp. 818; *Matthews v. Studley* (1897), 17 App. Div. 303, 307, 45 N. Y. Supp. 201, *affd.* (1900), 161 N. Y. 633, 57 N. E. 1117; *Walker v. Taylor* (1897), 15 App. Div. 452, 44 N. Y. Supp. 446; *Hunter v. Hunter* (1860), 31 Barb. 334, 336; *Deegan v. Von Glahn* (1894), 75 Hun 29, 26 N. Y. Supp. 989, *affd.* (1895), 144 N. Y. 573, 39 N. E. 692; *Stevenson v. Lesley* (1875), 49 How. Pr. 229, mod. (1877), 9 Hun 637, mod. (1877), 70 N. Y. 512; *Bean v. Bowen* (1874), 47 How. Pr. 306, 328; *Finch v. Wilkes* (1896), 17 Misc. 428, 41 N. Y. Supp. 227; *Chwatal v. Schreiner* (1896), 148 N. Y. 683, 43 N. E. 166; *Crooke v. County of Kings* (1884), 97 N. Y. 421; *Gilman v. Reddington* (1861), 24 N. Y. 9; *Van Cott v. Prentice* (1887), 104 N. Y. 45, 10 N. E. 257; *Hillyer v. Vandewater* (1890), 121 N. Y. 681, 24 N. E. 999; *Lee v. Tower* (1890), 34 N. Y. St. Rep. 835, 12 N. Y. Supp. 240, 245, mod. (1891), 124 N. Y. 370, 26 N. E. 943; *Lang v. Ropke* (1852), 5 Sandf. 363; *McGowan v. McGowan* (1853), 2 Duer 57; *La Farge v. Brown* (1898), 31 App. Div. 542, 52 N. Y. Supp. 93; *Cowen v. Rinaldo* (1894), 82 Hun 479, 31 N. Y. Supp. 554; *Morton Trust Co. v. Sands* (1907), 122 App. Div. 691, 107 N. Y. Supp. 698, *revd.* (1909), 195 N. Y. 28, 87 N. E. 783; *Dexter v. Watson* (1908), 54 Misc. 484, 106 N. Y. Supp. 80; *Genet v. Hunt* (1889), 113 N. Y. 158, 21 N. E. 91; *Amory v. Lord* (1853), 9 N. Y. 403; *Harris v. Clark* (1852), 7 N. Y. 242; *Fowler v. Ingersoll* (1891), 127 N. Y. 472, 28 N. E. 471; *McSorley v. Wilson* (1847), 4 Sandf. Ch. 515, 524; *Nester v. Nester* (1910), 68 Misc. 207, 124 N. Y. Supp. 974; *Matter of Raab* (1913), 79 Misc. 185, 139 N. Y. Supp. 869.

See also cases cited under § 96, post, and under § 11 of the Personal Property Law.

Other cases, bearing upon the question of the suspension of the power of alienation, are: *Ebling v. Dreyer* (1896), 149 N. Y. 460, 44 N. E. 155; *Kirk v. Kirk* (1893), 137 N. Y. 510, 33 N. E. 552; *Kent v. Church of St. Michael* (1892), 136 N. Y. 10, 32 N. E. 704, 18 L. R. A. 331; *Dana v. Murray* (1890), 122 N. Y. 604, 26 N. E. 21; *Woodruff v. Cook* (1875), 61 N. Y. 638; *Wetmore v. Parker* (1873), 52 N. Y. 450; *Schettler v. Smith* (1869), 41 N. Y. 308; *Knox v. Jones* (1872), 47 N. Y. 389; *Haynes v. Sherman* (1889), 117 N. Y. 433, 22 N. E. 938; *Delaney v. McCormack* (1882), 88 N. Y. 174; *DeLafield v. Shipman* (1886), 103 N. Y. 463, 19 N. E. 481; *Chipman v. Montgomery* (1875), 63 N. Y. 221; *Nellis v. Nellis* (1885), 99 N. Y. 505, 3 N. E. 59; *Vanderpoel v. Loew* (1889), 112 N. Y. 167, 19 N. E. 481, 9 N. E. 184; *Bird v. Pickford* (1894), 141 N. Y. 18, 35 N. E. 938; *Cook v. Lowry* (1883), 29 Hun 20, 28, mod. (1884), 95 N. Y. 103; *Bowers v. Beekman* (1878), 16 Hun 268; *Gage v. Gage* (1887), 43 Hun 501, *affd.* (1889), 112 N. Y. 667, 20 N. E. 414; *Beardsley v. Hotchkiss* (1884), 96 N. Y. 201; *Irving v. De Kay* (1842), 9 Paige 521, *affd.* (1846), 5 Denio 646; *Hannan v. Osborn* (1834), 4 Paige 336, 342; *Jackson ex dem. Nicoll v. Brown* (1835), 13 Wend. 437, 441; *Coster v. Lorillard* (1835), 14 Wend. 265, 305; *Root v. Stuyvesant* (1837), 18 Wend. 257; *Foote v. Bruggerhof* (1892), 66 Hun 406, 21 N. Y. Supp. 509; *Murray v. Murray* (1887), 7 N. Y. St. Rep. 391; *Underwood v. Curtis* (1889), 1 Silv. 280, 5 N. Y. Supp. 478, 482, *affd.* (1891), 127 N. Y. 523, 28 N. E. 585; *Durkee v. Smith* (1915), 90 Misc. 92, 153 N. Y. Supp. 316, *affd.* (1916), 171 App. Div. 72, 156 N. Y. Supp. 920, *affd.* (1916), 219 N. Y. 604, 114 N. E. 1066; *Pruyn v. Sears* (1916), 96 Misc. 200, 161 N. Y. Supp. 58.

§ 43. Limitation of successive estates for life.—Successive estates for life

shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 33; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 17.

Application; vested remainders.—Section refers to vested, and not to contingent remainders, and only protects the remainder in possession in favor of such ascertained persons as, except for the void life estate, would, under the terms of the will, or deed, be entitled to the immediate possession. *Purdy v. Hayt* (1883), 92 N. Y. 446, 452. See also *Vail v. Vail* (1849), 7 Barb. 226, 241, *affd.* (1850), 10 Barb. 69; *Amory v. Lord* (1853), 9 N. Y. 403; *Dana v. Murray* (1890), 122 N. Y. 604, 618, 26 N. E. 21; *Schettler v. Smith* (1869), 41 N. Y. 328, 347; *Gott v. Cook* (1839), 7 Paige 521, 532, *affd.* (1840), 24 Wend. 641.

See generally, as to application of section, *Matter of Ryder* (1899), 41 App. Div. 247, 253, 58 N. Y. Supp. 635; *Woodruff v. Cook* (1866), 47 Barb. 304, 307; *De Barante v. Gott* (1849), 6 Barb. 492, 502; *Salmon v. Stuyvesant* (1836), 16 Wend. 321, 324; *Harrison v. Harrison* (1867), 36 N. Y. 543, 545; *Woodruff v. Cook* (1875), 61 N. Y. 638; *Bailey v. Bailey* (1883), 28 Hun 603, 606.

Trusts.—Section does not apply. *La Farge v. Brown* (1898), 31 App. Div. 542, 545, 52 N. Y. Supp. 93. The trust estates for two lives created upon the termination of a life estate are not within the prohibition of this section. *Matter of Hurlbut* (1906), 51 Misc. 263, 100 N. Y. Supp. 1098.

§ 44. **Remainders on estates for life of third person.**—A remainder shall not be created on an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created on such an estate in a term of years, unless it be for the whole residue of such term.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 34; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 18.

Cross remainders.—A devise of real property for life to the three daughters of the testatrix "during the term that they each or the survivors or survivor of them shall remain single and unmarried, and also subject to the use, occupancy and enjoyment thereof in connection with my said daughters as aforesaid, by my beloved husband during his natural life," creates a tenancy in common in the three daughters with cross remainders for life, and their shares must be treated as separate entities. *Graham v. Graham* (1905), 49 Misc. 4, 97 N. Y. Supp. 779.

Application and effect of section.—See *Gilman v. Reddington* (1861), 24 N. Y. 9, 15.

Whether a remainder is well limited on a life estate which falls is an open question since the revised statute. *Matter of Hansen* (1911), 72 Misc. 610, 132 N. Y. Supp. 257.

§ 45. **When remainder to take effect if estate be for lives of more than two persons.**—When a remainder is created on any such life estate, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder shall take effect on the death of the two persons first named, as if no other lives had been introduced.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 35; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 19.

Application.—The life estates referred to are those mentioned in § 44, viz., estates “for the life of any other person or persons, than the grantee or devisee of such estate.” *Westerfield v. Westerfield* (1850), 1 Bradf. 137, 141.

See generally, *Woodruff v. Cook* (1866), 47 Barb. 304, 308; *Bailey v. Bailey* (1883), 28 Hun 603, 606.

§ 46. Contingent remainder on term of years.—A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or on the termination thereof.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 36; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 20.

See *Henderson v. Henderson* (1887), 46 Hun 509, 513, *affd.* (1889), 113 N. Y. 1, 20 N. E. 814.

§ 47. Estate for life as remainder on term of years.—No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 37; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 21.

See *Gilman v. Reddington* (1861), 24 N. Y. 9, 15.

§ 48. Meaning of heirs and issue in certain remainders.—Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words “heirs” or “issue” shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 39; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 22.

Under the common law the rule of construction was that such a limitation had reference to an indefinite failure of heirs of the body. *Seaman v. Harvey* (1878), 16 Hun 71, 75.

The word “heirs” when used in a will or other instrument, is to be understood in its primary or legal sense, unless it appears from other parts of the instrument, that it was used in the more restricted sense of children, heirs of the body or descendants. *Johnson v. Brasington* (1898), 156 N. Y. 181, 185, 50 N. E. 859. The word “heirs” used in the sense of children or descendants and not in its broad or general sense. See *Canfield v. Fallon* (1899), 26 Misc. 345, 348, 57 N. Y. Supp. 149, *affd.* (1899), 43 App. Div. 561, 60 N. Y. Supp. 1134, *affd.* (1899), 161 N. Y. 623, 55 N. E. 1093.

The use of the disjunctive “or,” separating the two worlds “children” and “heirs,” may indicate that the testator had in mind two classes of persons as devisees of the remainder, either of which would take in the absense of the other. *Johnson v. Brasington* (1898), 156 N. Y. 181, 186, 50 N. E. 859.

The word “issue” in a deed or will, where used as a word of purchase, and where its meaning is not defined by the context and there are no indications that it was used in any other than its legal sense, comprehends all persons in the line of descent from the ancestor and so has the same meaning as “descendants.” *Soper v. Brown* (1892), 136 N. Y. 244, 32 N. E. 768.

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The word "issue" in a technical sense is equivalent to the word "descendants," and when such word is used in a will in the absence of other words or extrinsic circumstances requiring a different meaning, it entitles the remaindermen to take *per capita* and not *per stirpes*. *Kernochan v. Whitney* (1908), 125 App. Div. 371, 109 N. Y. Supp. 721.

See generally, as to application of section, *Matter of Moore* (1897), 152 N. Y. 602, 609, 46 N. E. 960; *Matter of N. Y., L. & W. Ry. Co.* (1887), 105 N. Y. 89, 96, 11 N. E. 492; *Norris v. Beyea* (1855), 13 N. Y. 273, 279; *Bowman v. Tallman* (1864), 27 How. Pr. 212, 281, *affd.* (1869), 40 How. Pr. 1; *Rathbone v. Dyckman* (1831), 3 Paige 9, 30; *In re Maben's Estate* (1889), 32 N. Y. St. Rep. 790, 12 N. Y. Supp. 6, 7, *revd.* (1891), 60 Hun 268, 14 N. Y. Supp. 732, *revd.* (1892), 131 N. Y. 255, 30 N. E. 98.

§ 49. **Limitations of chattels real.**—All the provisions contained in this article, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 39; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 23.

Chattels real are such as concern realty, as terms for years, etc., and are immovable. *Putnam v. Westcott* (1821), 19 Johns. 73, 76. They are not within the chattel mortgage act. *State Trust Co. v. Casino Co.* (1896), 18 Misc. 327, 41 N. Y. Supp. 1, *affd.* (1897), 19 App. Div. 344, 46 N. Y. Supp. 492; *Booth v. Kehoe* (1877), 71 N. Y. 341.

The effect of this section is to abolish the distinction between executory limitations of real and personal property. *In re Nanny* (1885), 21 Wk. Dig. 532.

§ 50. **Creation of future and contingent estates.**—Subject to the provisions of this article, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee or other less estate may be limited on a fee, on a contingency which, if it should occur, must happen within the period prescribed in this article.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 40; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 24.

Fee limited upon a fee upon a contingency.—See *Matter of Dodge* (1886), 40 Hun 443, 449, *revd.* (1887), 105 N. Y. 585, 12 N. E. 759; *Mott v. Ackerman* (1883), 92 N. Y., 539, 550; *Sherman v. Sherman* (1848), 3 Barb. 385, 387; *Matter of McCaffrey* (1888), 50 Hun 371, 374, 3 N. Y. Supp. 96; *Knowlton v. Atkins* (1892), 134 N. Y. 313, 318, 31 N. E. 914.

§ 51. **Future estates in the alternative.**—Two or more future estates may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 41; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 25.

Limitations in the alternative are valid. *Matter of Wilcox* (1908), 125 App.

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Div. 152, 109 N. Y. Supp. 564, revd. (1909), on other grounds, 194 N. Y. 288, 87 N. E. 497. Where a limitation is made to take effect on two alternative events, one of which is too remote and the other valid as within the prescribed limits, although the gift is void so far as it depends on the remote event, it will be allowed to take effect on the happening of the alternative one. *Schettler v. Smith* (1869), 41 N. Y. 328, 336.

See generally, *Knowlton v. Atkins* (1892), 134 N. Y. 313, 318, 31 N. E. 914; *Hennessy v. Patterson* (1881), 85 N. Y. 91, 99; *Manice v. Manice* (1871), 43 N. Y. 303, 379.

§ 52. **Future estate valid though contingency improbable.**—A future estate, otherwise valid, shall not be void on the ground of the improbability of the contingency on which it is limited to take effect.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 40; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 26.

§ 53. **Conditional limitations.**—A remainder may be limited on a contingency, which, if it happens, will operate to abridge or determine the precedent estate; and every such remainder shall be a conditional limitation.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 43; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 27.

Conditional limitation; what constitutes.—See *Towle v. Remsen* (1877), 70 N. Y. 303, 312; *Crooke v. County of Kings* (1884), 97 N. Y. 421, 449; *Matter of Dodge* (1886), 40 Hun 443, 449, revd. (1887), 105 N. Y. 585, 12 N. E. 759.

Precedent limitation.—Where a devise is limited to take effect on a condition annexed to a precedent estate, if the precedent estate should never arise, the remainder over will take place, the first estate being considered only as a precedent limitation and not as a precedent condition, to give effect to a subsequent limitation. *U. S. Trust Co. v. Hogenkamp* (1908), 191 N. Y. 281, 84 N. E. 74, affg. (1906), 115 App. Div. 899, 101 N. Y. Supp. 1147.

§ 54. **When heirs of life tenant take as purchasers.**—Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 44; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 28.

Rule in *Shelley's case* abolished by this section. See 4 Kent's Commentaries, 216-233 (14th Ed., 1896).

As to effect of abolition of rule. See *Webb v. Sweet* (1907), 187 N. Y. 172, 79 N. E. 1024.

When deed of trust does not create interest in heirs which is aleinable.—A deed of trust of real estate executed for the benefit of the grantor, who is to be paid from the income a certain sum yearly, unless in the discretion of the trustee he shall deem it most for the benefit of the grantor that a larger sum be paid, which further provides that the trustee, if he desires, may relinquish the trust and convey the premises to the grantor, or may appoint another trustee in his place, and which further provides that upon the death of the grantor the trustee shall convey the premises not sold to the heirs at law of the grantor, or the balance remaining if a sale of the lands has been made, does not create any vested or

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contingent interest whatever in the grantor's heirs at law, during his lifetime, which is descendible, devisable or alienable. *Doctor v. Hughes* (1916), 174 App. Div. 767, 161 N. Y. Supp. 634.

See generally, *Olmstead v. Olmstead* (1850), 4 N. Y. 56; *Barber v. Cary* (1854), 11 N. Y. 401; *Moore v. Little* (1869), 41 N. Y. 66; *Smith v. Scholtz* (1877), 68 N. Y. 91; *Crain v. Wright* (1889), 114 N. Y. 307, 21 N. E. 401; *Spader v. Powers* (1890), 56 Hun 153, 9 N. Y. Supp. 39; *Moak v. Moak* (1896), 8 App. Div. 197, 40 N. Y. Supp. 438; *Surdam v. Cornell* (1889), 116 N. Y. 305, 309, 22 N. E. 450; *McGillis v. McGillis* (1896), 11 App. Div. 359, 362, 42 N. Y. Supp. 921, modf. (1898), 154 N. Y. 532, 49 N. E. 145.

§ 55. When remainder not limited on contingency defeating precedent estate takes effect.—When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration by lapse of time of such term of years.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 45; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 29.

§ 56. Posthumous children.—Where a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parents; and a future estate, dependent on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 46; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 30, 31.

References.—Rights of children born after execution of will, *Decedents Estate Law*, §§ 26, 28. Devise to child or descendant not to lapse, *Id.* § 29. Descents to posthumous children and relatives of decedent, *Id.* § 93.

Posthumous children are placed on the same footing, with respect to property devised, and to property coming by descent, as other children of the same parent. *Mason v. Jones* (1848), 2 Barb. 229, 251. See also *Fox v. Fee* (1897), 24 App. Div. 314; 49 N. Y. Supp. 292; *Campbell v. Stokes* (1894), 142 N. Y. 23, 36 N. E. 811; *Kane v. Odell* (1916), 171 App. Div. 324, 157 N. Y. Supp. 308.

§ 57. When expectant estates are defeated.—An expectant estate can not be defeated or barred by any transfer or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise; but an expectant estate may be defeated in any manner, or by any act or means which the party creating such estate, in the creation thereof, has provided for or authorized. An expectant estate thus liable to be defeated shall not, on that ground, be adjudged void in its creation.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 47; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 32, 33.

Application and effect of section.—The arbitrary rule adopted by the common law that it was illegal to allow a remainder or other legal estate to be limited after a fee, has been abolished by this section. *Greyston v. Clark* (1886), 41 Hun 125; *Matter of Wescott* (1888), 16 N. Y. St. Rep. 286, 289; *Simpson v. French* (1888),

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6 Dem. 108, 115. See generally, *Matter of Wyatt* (1894), 9 Misc. 285, 291, 30 N. Y. Supp. 275; *Bailey v. Bailey* (1883), 28 Hun 603, 614; *Van Horne v. Campbell* (1885), 100 N. Y. 287, 3 N. E. 316, 771; *Moore v. Little* (1869), 41 N. Y. 78; *Griffin v. Shepard* (1891), 124 N. Y. 76, 26 N. E. 339; *Crozler v. Bray* (1890), 120 N. Y. 373, 24 N. E. 712; *Campbell v. Beaumont* (1883), 91 N. Y. 464; *Coleman v. Beach* (1885), 97 N. Y. 553; *Leggett v. Firth* (1892), 132 N. Y. 7, 11, 29 N. E. 950; *Bell v. Warn* (1875), 4 Hun 406; *Bennett v. Garlock* (1877), 10 Hun 328, revd. (1880), 79 N. Y. 302; *Wells v. Seeley* (1888), 47 Hun 109; *Matter of Blauvelt* (1891), 69 Hun 394, 15 N. Y. Supp. 586, revd. (1892), 131 N. Y. 249, 30 N. E. 194; *Green v. Head* (1907), 54 Misc. 454, 457, 104 N. Y. Supp. 383.

A contingent future remainder is authorized by this section, and is valid, even though the first taker is permitted to dispose of the whole during his lifetime for purposes other than his maintenance and support, and thus by his will defeat such contingent estate. *Matter of French* (1888), 13 N. Y. St. Rep. 759, 763.

Remainder over, how affected by power of life tenant to dispose of estate. See *Van Axte v. Fisher* (1889), 117 N. Y. 401, 22 N. E. 943; *Swartout v. Ranier* (1894), 143 N. Y. 499, 38 N. E. 726; *Matter of Gardner* (1893), 140 N. Y. 122, 35 N. E. 439; *Cole v. Gourlay* (1876), 9 Hun 453, affd. (1880), 79 N. Y. 527; *Greyston v. Clark* (1886), 41 Hun 125; *Douglass v. Hazen* (1896), 8 App. Div. 25, 40 N. Y. Supp. 1012; *Simmons v. Taylor* (1896), 19 App. Div. 499, 46 N. Y. Supp. 730.

A will giving an absolute legacy to one with a remainder to another, if the property be not disposed of by the first legatee, see *Thomas v. Wolford* (1888), 49 Hun 145, 1 N. Y. Supp. 610; *Colt v. Heard* (1877), 10 Hun 189; *Terry v. Wiggins* (1872), 47 N. Y. 512, 518.

§ 58. Effect on valid remainders of determination of precedent estate before contingency.—A remainder valid in its creation shall not be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder was limited to take effect; should such contingency afterwards happen the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 48; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 34.

See *Campbell v. Rawdon* (1858), 18 N. Y. 412, 419; *Sheridan v. House* (1868), 4 Abb. Ct. App. Dec. 218, 224; *Matter of McQueen* (1917), 99 Misc. 185, 191, 163 N. Y. Supp. 287.

§ 59. Qualities of expectant estates.—An expectant estate is descendible, devisable and alienable, in the same manner as an estate in possession.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 49; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 35.

Since the revised statutes all expectant estates have been alienable whether vested or contingent. *Matter of Lauter v. Hirsch* (1910), 67 Misc. 16, 121 N. Y. Supp. 651.

The word "alienable" in this section empowers the owner of an expectant estate to deal with the same in all respects as he might if he were actually in possession of the property representing the estate. *N. Y. Life Ins. & Trust Co. v. Cary* (1908), 191 N. Y. 33, 83 N. E. 598.

The person in whom an expectant estate is vested has the same control over the interest which he thus possesses as though he were in actual possession of the property representing the estate. He may deal with it in precisely the same manner. *Livingston v. N. Y. Life Ins. & T. Co.* (1891), 36 N. Y. St. Rep. 566, 13 N.

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Y. Supp. 105. See also *Green v. Head* (1907), 54 Misc. 454, 457, 104 N. Y. Supp. 383.

Vested future estates are devisable and descendible.—See *Lingsweller v. Hart* (1896), 10 App. Div. 156, 157, 41 N. Y. Supp. 862, *affd.* (1899), 159 N. Y. 543, 54 N. E. 1093; *Griffin v. Shepard* (1891), 124 N. Y. 70, 76, 26 N. E. 339; *Freeborn v. Wagner* (1868), 2 Abb. App. Dec. 175, 182; *Ramsay v. De Remer* (1892), 65 Hun 212, 214, 20 N. Y. Supp. 143; *Tredwell v. Tredwell* (1914), 86 Misc. 104, 148 N. Y. Supp. 391.

A conveyance of lands to E for life, with a proviso that, should the estate terminate during the lifetime of E, remainder to go to N for the residue of E's life, and further providing that on the death of E the remainder should go to him and his heirs, vests E with both the life estate and the remainder. The interest, other than the life estate, is an estate in expectancy, for it is a future estate, termed a remainder, which can be created and transferred by that name, and as an expectant estate it is descendible, devisable and alienable in the same manner as an estate in possession. *Ray v. Jaeger* (1909), 131 App. Div. 294, 115 N. Y. Supp. 737.

Assignment by *cestui que trust* of her interest in corpus of fund to trustee. *Heise v. Wells* (1914), 211 N. Y. 1, 7, 104 N. S. 1120.

Vested remainders are descendible. *Ham v. Van Orden* (1881), 84 N. Y. 257, 270; *Moore v. Littel* (1869), 41 N. Y. 66; *Savage v. Pike* (1866), 45 Barb. 464.

Contingent estates, assignability of. See *Miller v. Emans* (1859), 19 N. Y. 390; *Upton v. Corrigan* (1897), 151 N. Y. 143, 45 N. E. 359, 37 L. R. A. 794; *Edwards v. Varick* (1846), 5 Den. 664, 685.

Section applies to contingent remainders. See *Lawrence v. Bayard* (1838), 7 Paige 70; *Beardsley v. Hotchkiss* (1884), 96 N. Y. 201, 213; *Crooke v. County of Kings* (1884), 97 N. Y. 421, 449; *Dodge v. Stevens* (1887), 105 N. Y. 585, 588, 12 N. E. 759; *Hennessy v. Patterson* (1881), 85 N. Y. 91, 99; *Pickert v. Windecker* (1893), 73 Hun 476, 26 N. Y. Supp. 437; *Savage v. Pike* (1866), 45 Barb. 464; *Smiley v. Bailey* (1870), 59 Barb. 80, 84; *Leslie v. Marshall* (1860), 31 Barb. 560, 564; *Brevoort v. Grace* (1873), 53 N. Y. 245, 259; *Eells v. Lynch* (1861), 21 N. Y. Super (8 Bosw.) 465, 480.

A contingent remainder in fee over to the children or to the issue of deceased children, of the grantor, will not pass by the will of a child who died before the termination of the precedent estate, where the grant provided that in default of issue of the grantor living at the termination of the precedent estate, the property should go to his heirs-at-law. *Paget v. Melcher* (1898), 156 N. Y. 399, 51 N. E. 24.

Contingent interests may be such that the interest or estate is not transmissible, descending or devisable, but so far as the nature of the contingency admits, all expectant estates are descendible, devisable and alienable. Future contingent interests in personal property are alienable, the same as contingent remainders in real property, and such an interest passes to a trustee in bankruptcy. *Clowe v. Seavey* (1913), 208 N. Y. 496, 102 N. E. 521.

Possibilities; descent or assignability of.—A mere possibility or contingency, unconnected with any interest in, or growing out of, property, cannot be made the subject of a valid sale or grant, although it may be released to the owner of the land. *Johnston v. Spicer* (1886), 41 Hun 475, 477, *mod.* (1887), 107 N. Y. 185, 13 N. E. 753.

The possibility of reverter by the exercise of the right of re-entry, on the happening of a breach of a condition subsequent, is not descendible or devisable; but upon the death of the grantor before re-entry, it devolves upon his heirs-at-law by force of representation and not by descent. *Upton v. Corrigan* (1896), 151 N. Y. 143, 45 N. E. 359, 37 L. R. A. 794.

But a mere possibility coupled with an interest is capable of being conveyed or assigned at law, as well as in equity, in the same manner as an estate or interested in possession. *Lawrence v. Bayard* (1838), 7 Paige 70.

See also *Towle v. Remsen* (1877), 70 N. Y. 812; *Van Rensselaer v. Ball* (1859), 19 N. Y. 100, 103; *Van Rensselaer v. Read* (1863), 26 N. Y. 563; *Nicoll v. N. Y. & E. R. R. Co.* (1854), 12 N. Y. 121, 130.

Sale under a power by trustees.—Trustees holding property in trust as remaindermen, subject to the life estate of a testator's widow, may, if the power is conferred upon them by the will, dispose of their interest therein and execute the trust during the lifetime of the life tenant; the supreme court has no power to direct as to the time when such disposition shall be made, unless there is a failure to execute the trust upon the part of the trustees. *Rothschild v. Schiff* (1907), 138 N. Y. 327, 80 N. E. 1030, modfg. (1905), 103 App. Div. 235, 92 N. Y. Supp. 101.

Testator may make an expectant estate subject to be defeated by the exercise of a power of sale given to the trustees which must be exercised before the owner of the expectant estate becomes vested with the absolute title. *Bascom v. Weed* (1907), 53 Misc. 499, 105 N. Y. Supp. 459.

Sale on execution.—Vested remainders may be subject to levy and sale. *Sheridan v. House* (1868), 4 Abb. App. Dec. 218, 226; *Sayles v. Best* (1893), 140 N. Y. 368, 373, 35 N. E. 636. A husband's contingent interest, in an estate in entirety, dependent upon his surviving his wife, may be sold on execution. *Beach v. Hollister* (1875), 3 Hun 519, 521.

A contingent remainder in a trust estate may be sold to satisfy a judgment against the remainderman. *Cohalan v. Parker* (1910), 138 App. Div. 849, 123 N. Y. Supp. 343.

Mortgage of contingent estates in expectancy.—An estate was left in trust during the lifetime of the beneficiary, and at her death was to be divided equally among three persons; in the event of the death of any of the three before the termination of the trust his share was to go to his children, or if he die without children, to the other two or their children; held, the interests of the remaindermen are contingent estates in expectancy, and while not descendible nor devisable during the lifetime of the beneficiary, are alienable and hence may be mortgaged. *Ward v. Ward* (1904), 131 Fed. 946, affd. (1905), 145 Fed. 1023.

§ 60. Disposition of rents and profits.—A disposition of the rents and profits of real property to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article for future estates in real property.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 50; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 36.

See generally, *Van Rensselaer v. Read* (1863), 26 N. Y. 564; *Van Rensselaer v. Hays* (1859), 19 N. Y. 63.

§ 61. Accumulations.—All directions for the accumulation of the rents and profits of real property, except such as are allowed by statute, shall be void. An accumulation of rents and profits of real property, for the benefit of one or more persons may be directed by any will or deed sufficient to pass real property, as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made

for the benefit of one or more minors then in being, and terminate at or before the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it must commence within the time permitted, by the provisions of this article, for the vesting of future estates, and during the minority of the beneficiaries, and shall terminate at or before the expiration of such minority.

3. If in either case, hereinbefore provided for, such direction be for a longer term than during the minority of the beneficiaries, it shall be void only as to the time beyond such minority.

Provided, that the income arising from any real property granted, conveyed, or devised in trust to any incorporated college or other incorporated literary institution for any of the purposes specified in section one hundred and fourteen of this chapter, or for the purposes of providing for the support of any teacher in a grammar school or institute, may be permitted to accumulate until the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect any of the charitable uses and trusts mentioned either in section one hundred and fourteen of this chapter or in this paragraph of this section.

Provided, if any of the principal of any trust fund actually received by any incorporated college or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, or devise, for any of the purposes for which trusts are authorized under section one hundred and fourteen of this chapter, shall subsequently become diminished from any cause, such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions, if any contained in the grant, conveyance or devise of any such trust fund; and if no directions for that purpose are contained in such grant, conveyance or devise, then such diminution may be made up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund, beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

Provided further, that where a gift, grant, devise or bequest of real and personal property, or of real property alone, is made in trust by the owner thereof to a religious, educational, charitable or benevolent corporation, for any of the purposes specified or comprehended in its charter, not more than one-fourth of the total value of such gift, grant, devise or bequest of real and personal property, or of real property alone, not exceeding in value the sum of fifty thousand dollars, may be set apart for the accumulation of

the rents and profits, and income, of such property, for the benefit of such corporation, until such time as such accumulation shall amount to the sum of one hundred thousand dollars, whereupon such accumulation shall be available for the use of such corporation, as a part of the permanent endowment fund thereof, or otherwise as provided in the conditions of the gift, grant, devise or bequest to such corporation. (*Amended by L. 1915, ch. 670.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 51; L. 1846, ch. 74; L. 1855, ch. 432; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 37, 38.

Reference.—Validity of directions for accumulation of income of personal property, *Personal Property Law*, § 16.

Accumulations must be for benefit of minors.—The only directions for the accumulation of rents and profits of real property allowed by statute are those for the benefit of infants in being at the creation of the estate out of which the rents and profits are to arise. *St. John v. Andrews Institute* (1908), 191 N. Y. 254, 83 N. E. 981, modfg. (1907), 117 App. Div. 698, 118 N. Y. Supp. 808. Accumulations of income may be directed for one purpose only and within a single period for the benefit of an infant and during minority, *Cochrane v. Alexandre* (1907), 56 Misc. 212, 107 N. Y. Supp. 587; *Pray v. Hegeman* (1883), 92 N. Y. 515. But an adult may be a contingent beneficiary. *Smith v. Parsons* (1895), 146 N. Y. 116, 40 N. E. 736. See generally, *Harris v. Clark* (1852), 7 N. Y. 242; *Kilpatrick v. Johnson* (1857), 15 N. Y. 322; *Barbour v. De Forrest* (1884), 95 N. Y. 13; *Pray v. Hegeman* (1883), 92 N. Y. 508; *Cook v. Lowry* (1884), 95 N. Y. 103; *Cochrane v. Schell* (1896), 140 N. Y. 516, 35 N. E. 971; *Schermerhorn v. Cotting* (1892), 131 N. Y. 48, 29 N. E. 980; *Hawley v. James* (1836), 16 Wend. 61; *King v. Rundle* (1853), 15 Barb. 139; *Boynton v. Hoyt* (1845), 1 Den. 53; *Matter of Dey Ermand* (1881), 24 Hun 1; *Matter of Rogers* (1897), 22 App. Div. 428, 48 N. Y. Supp. 175, affd. (1899), 161 N. Y. 108, 55 N. E. 393; *Hunter v. Hunter* (1853), 17 Barb. 25, 60; *Robison v. Robison* (1871), 5 Lans. 165, 167; *Brandt v. Brandt* (1895), 13 Misc. 431, 34 N. Y. Supp. 684; *Horndorf v. Horndorf* (1895), 13 Misc. 343, 34 N. Y. Supp. 560; *Richardson v. Hunt* (1891), 38 N. Y. St. Rep. 274, 279, 14 N. Y. Supp. 48, 52; *In re Hoyt's Estate* (1890), 32 N. Y. St. Rep. 787, 11 N. Y. Supp. 901.

Beneficiaries must be in being.—An accumulation is only permitted for the benefit of living objects. *Goebel v. Wolf* (1889), 113 N. Y. 405, 415, 21 N. E. 388. Thus, where a decedent devises and bequeaths certain of his property to his executors in trust, directing them to pay a fixed sum annually to each of the two sons of the testator, during the life of each, and further directs that the surplus remaining after the payment of such fixed sum should be distributed upon the death of either of the sons to his heirs, such trust for accumulation is invalid where it appears that neither of the decedent's sons are married at the time of the decedent's death, and that consequently there are no persons in being for whom the surplus could be accumulated under the statute. *U. S. Trust Co. v. Soher* (1904), 178 N. Y. 442, 70 N. E. 970, affg. (1903), 88 App. Div. 506, 85 N. Y. Supp. 266.

An implied trust to accumulate a part of the income of a share of the testator's estate for children or descendants of a party, who are not in existence at the time when such accumulation is to commence, or whose right to the accumulation fund is entirely contingent, is void. *Haxtun v. Corse* (1848), 2 Barb. Ch. 506, 518.

When accumulation to begin.—Accumulations must commence on or subsequent to the date of the deed. *Hunter v. Hunter* (1853), 17 Barb. 25, 60. See *Manice v. Manice* (1871), 43 N. Y. 303, 375; *Mason v. Jones* (1848), 2 Barb. 229; *Gott v. Cook* (1839), 7 Paige 521, affd. (1840), 24 Wend. 641.

Accumulations must terminate at the expiration of the minority. *Harris v.*

Clark (1858), 7 N. Y. 242; *Matter of Hayden* (1894), 77 Hun 219, 222, 28 N. Y. Supp. 357. For they are void beyond the minority of children. *Simpson v. English* (1873), 1 Hun 559, 4 T. & C. 80, 82.

Trust construed so as not to permit an accumulation of the rents and profits of land for a period extending beyond the minority of the beneficiaries. See *Arthur v. Arthur* (1896), 3 App. Div. 375, 377, 38 N. Y. Supp. 1002.

When accumulations for benefit of minor vest.—Accumulations for the benefit of a minor vest in him immediately. *Draper v. Palmer* (1889), 4 Silv. 308, 7 N. Y. Supp. 614. And vest absolutely when the minor becomes of age and must be paid over, and cannot be added to the principal of the trust fund. *Tweddell v. N. Y. Life Ins. & Trust Co.* (1894), 82 Hun 602, 606, 34 N. Y. Supp. 764; *Pray v. Hegeman* (1883), 92 N. Y. 508; *Barbour v. De Forrest* (1884), 95 N. Y. 13.

Where a *valid* accumulation of rents and income takes place for the benefit of a minor, the rents and income so accumulated not only vest in the minor, but, on his becoming of age, they vest in him *absolutely*, so as no longer to be liable to be divested. *Gilman v. Healy* (1881), 1 Dem. 404, 407.

Distribution of income upon death of infant beneficiary.—Upon the death of an infant beneficiary, his interest in the accumulation of income from a trust estate descends to his heirs or next of kin, according to the nature of the property. *Goebel v. Wolf* (1889), 113 N. Y. 405, 415, 21 N. E. 388.

Implied direction for accumulation.—See *Matter of Fritts* (1897), 19 Misc. 402, 44 N. Y. Supp. 344.

Accumulations for paying debts.—See *Garvey v. McDevitt* (1878), 72 N. Y. 556; *Goebel v. Wolf* (1889), 113 N. Y. 405, 414, 21 N. E. 388; *Killam v. Allen* (1868), 52 Barb. 605; *Cowen v. Rinaldo* (1894), 82 Hun 479, 484, 31 N. Y. Supp. 554; *Matter of Rogers* (1897), 22 App. Div. 428, 48 N. Y. Supp. 175, *affd.* (1899), 161 N. Y. 108, 55 N. E. 393; *Matter of Hoyt* (1893), 71 Hun 13, 24 N. Y. Supp. 577; *Wells v. Wells* (1892), 30 Abb. N. C. 225, 24 N. Y. Supp. 874.

Accumulations for payment of mortgages.—A trust to use rents and profits to pay mortgages is a trust for accumulation, increasing the capital of the estate by decreasing the burden thereon, and is invalid notwithstanding such accumulation takes the form of an extinguishment of indebtedness, and is limited to the surplus income remaining after the payment of an annuity and restricted to the lifetime of the annuitant. *Hascall v. King* (1900), 162 N. Y. 134, 56 N. E. 515. See also *Matter of Fisher* (1893), 4 Misc. 46, 25 N. Y. Supp. 79; *Killam v. Allen* (1868), 52 Barb. 605.

A trust which directs the trustee to apply surplus income to the payment of mortgages upon lands of which the testator died possessed, constitutes an unlawful accumulation. *Kirk v. McCann* (1907), 117 App. Div. 56, 101 N. Y. Supp. 1093.

A trust to apply rents, issues and profits to the payment of the principal of a mortgage constitutes an unlawful accumulation of income. Such a trust will be declared void *in toto* at the suit of the settlor, although the trust also provides that the net income, after deducting the sums paid on the mortgage, is to be paid to the settlor for life. *Herzig v. Herzig* (1910), 140 App. Div. 514, 125 N. Y. Supp. 402.

Accumulation of surplus income.—The surplus income from a trust estate, given by a testator to his wife, cannot be accumulated to meet a future deficiency of income; but such deficiency may be made good from future surplus. *Spencer v. Spencer* (1899), 38 App. Div. 403, 410, 56 N. Y. Supp. 460.

Surplus income, so far as it arises from real estate or the proceeds thereof, belongs to the heirs-at-law, a trust for the accumulation thereof being void. *Haxtun v. Corse* (1848), 2 Barb. Ch. 506, 518; *Hunter v. Hunter* (1853), 17 Barb. 25, 60; See also *Cochrane v. Schell* (1894), 140 N. Y. 516, 536, 35 N. E. 971.

Where real estate was devised in trust to pay to testator's niece \$2,500 yearly out of the net rental, any surplus income after the payment of interest, taxes, etc., to be reserved to meet unusual or unexpected expenses or to be accumulated for the benefit of the property, the attempted accumulation is void under this section and the entire net income of the trust estate goes to testator's niece during her lifetime. *Penniman v. Howard* (1911), 71 Misc. 598, 128 N. Y. Supp. 910.

Accumulations while corporation is being formed.—An accumulation of rents and profits during the period intervening between the death of a testator and the formation of a corporation to take such rents and profits, is not unlawful. *St. John v. Andrews Institute* (1907), 117 App. Div. 698, 102 N. Y. Supp. 808, modif. (1908), 191 N. Y. 254, 83 N. E. 981.

Use of income by trustee in management of estate.—A discretionary power given to trustees to make a disbursement of income upon and in the course of the management of the property, if restricted to such matters as tend to preserve it, or to make it efficient for earning purposes, is not a violation of this section. *Matter of Nesmith* (1894), 140 N. Y. 609, 613, 35 N. E. 942.

Effect of unlawful directions for accumulations.—The cases are numerous which hold that a trust otherwise lawfully constituted is not invalidated because of an unlawful direction for accumulation. *Cochrane v. Schell* (1894), 140 N. Y. 516, 536, 35 N. E. 971; *Robison v. Robison* (1871), 5 Lans. 165, 168; *Hawley v. James* (1835), 5 Paige 318, 481, revd. (1836), 16 Wend. 61; *Kilpatrick v. Johnson* (1857), 15 N. Y. 322.

Where the surplus of the income of a trust is to be accumulated for the life of a widow, not a minor, the invalidity of the accumulation will not affect the trust. The incidental direction to accumulate the surplus should be eliminated and the trust otherwise be upheld. *Endress v. Willey* (1907), 52 Misc. 388, 102 N. Y. Supp. 71, affd. (1907), 122 App. Div. 110, 106 N. Y. Supp. 726, affd. (1910), 197 N. Y. 541, 91 N. E. 1112.

Where a will creates a trust during the minority or life of testator's son, and by a subsequent clause provides for the division of the estate among testator's children *per stirpes* on the termination of the trust, said trust becomes inoperative if the son obtains his majority during the life of the testator, and the subsequent clause does not fall with the trust, but takes effect immediately. *Matter of Arensberg* (1907), 120 App. Div. 463, 104 N. Y. Supp. 1033.

Although the income from certain real property be directed by the will to be accumulated contrary to the provisions of the statute, a vendee under contract to buy the property will be held to such contract where the objection to the validity of the will and the power of the trustees is not raised by the beneficiaries. *Graham v. Ackerly* (1907), 120 App. Div. 430, 105 N. Y. Supp. 51.

The statute avoids directions to accumulate made by deed or will, except as specified. *Livingston v. Tucker* (1887), 107 N. Y. 549, 552, 14 N. E. 443, holding that the will did not contain any such directions. *Lovett v. Gillender* (1866), 35 N. Y. 617, 620. See generally, *Roe v. Vingut* (1889), 117 N. Y. 204, 217, 22 N. E. 933; *Vall v. Vall* (1834), 4 Paige 317, 332.

See generally, as to application of section.—*Matter of O'Reilly* (1908), 59 Misc. 136, 139, 112 N. Y. Supp. 208; *Matter of Phillips* (1907), 56 Misc. 96, 102, 107 N. Y. Supp. 388; *Allen v. Shepard & Allen* (1887), 11 N. Y. St. Rep. 561, 563; *Matter of Tilden* (1886), 5 Dem. 230, 232, mod. (1887), 44 Hun 441; *McGrath v. Van Stavoren* (1880), 8 Daly 454; *Potter v. McAlpine* (1885), 3 Dem. 108, 126; *Wells v. Wells* (1892), 24 N. Y. Supp. 874, 877; *Morgan v. Masterson* (1851), 6 N. Y. Super. (4. Sandf.) 442; *Converse v. Kellogg* (1850), 7 Barb. 590; *Hill v. Guaranty Trust Co.* (1914), 163 App. Div. 374, 376, 148 N. Y. Supp. 601; *Matter of Raab*, (1913), 79 Misc. 187, 192, 139 N. Y. Supp. 869; *Matter of Ziegler* (1913), 82 Misc. 10, 13, 143 N. Y. Supp. 682.

§ 62. **Anticipation of directed accumulation.**—Where such rents and profits are directed to be accumulated for the benefit of a minor entitled to the expectant estate, and such minor is destitute of other sufficient means of support and education, the supreme court, at a special term, or, if such accumulation has been directed by will, the surrogate's court of the county in which such will has been admitted to probate, may, on the application of his general or testamentary guardian, direct a suitable sum out of such rents and profits to be applied to his maintenance or education.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 52; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 39, as amended by L. 1891, ch. 172.

Reference.—Similar provision as to accumulation of income of personal property, Personal Property Law, § 17.

An application to the surrogate to direct the trustee of an infant to pay over a suitable sum for education and support will be granted, although the direction for accumulation was by implication, and the father of the infant had failed in an application to the supreme court, to which the guardian was not a party. *Matter of Fritts* (1897), 19 Misc. 402, 44 N. Y. Supp. 344.

Duty of court to promote welfare of infant beneficiaries.—The court of chancery in applying the income of infants, endeavors to promote their permanent interest, welfare and happiness, rather than to accumulate a surplus. *Matter of Burke* (1847), 4 Sandf. Ch. 617; *Gladding v. Follett* (1883), 2 Dem. 58, 67, *affd.* (1883), 30 Hun 219, *affd.* (1884), 95 N. Y. 652.

See generally, *Smith v. Geortner* (1870), 40 How. Pr. 185; *Matter of Bostwick* (1819), 4 Johns. Ch. 100; *Matter of Davison* (1836), 6 Paige, 136.

§ 63. **Undisposed profits.**—When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate. But any and all persons who legally shall have begun heretofore, or shall begin hereafter, to receive any such undisposed of rents and profits or any part thereof by virtue of this section or otherwise, shall continue to receive and enjoy the same notwithstanding the birth thereafter of a child or children to any person or persons receiving all or any part of such rents and profits. (*Amended by L. 1916, ch. 364.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 53; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 40.

Application of section.—This section applies only when there shall be a suspension of the power of alienation or of the ownership, during the continuance of which the rents and profits shall be undisposed of and no valid direction given for their accumulation. *Bailey v. Bailey* (1883), 28 Hun 603, 613. Thus, where there is a valid suspension of the power of alienation during the continuance of two lives in being, and after the death of one of the beneficiaries there is no disposition made of one-half of the rents and profits of the trust fund, such rents and profits belong to the persons entitled to the next eventual estate. *Gould v. Rutherford* (1894), 79 Hun 280, 29 N. Y. Supp. 362.

But the section does not apply to an accumulation of the surplus income which is invalid because there were no persons in being at the death of the testator who were entitled to the benefits of the accumulation. *U. S. Trust Co. v. Soher* (1904),

178 N. Y. 442, 70 N. E. 970, affg. (1903), 88 App. Div. 506, 85 N. Y. Supp. 266.

The purpose of this section is to allow him who is to take the future estate also to take the rents and profits in the interim pending the vesting in possession of his estate where they are not given to another, but said section does not apply where there is an unlawful disposition of the rents and profits. *Matter of Kohler* (1916), 96 Misc. 433, 160 N. Y. Supp. 669.

Generally as to application of section. See *Bloodgood v. Lewis* (1913), 209 N. Y. 95, 103 N. E. 1121; *Young v. Barker* (1910), 141 App. Div. 801, 806, 127 N. Y. Supp. 211; *Staples v. Mead* (1912), 152 App. Div. 745, 751, 137 N. Y. Supp. 847; *Tredwell v. Tredwell* (1914), 86 Misc. 104, 148 N. Y. Supp. 391; *Matter of Harteau* (1908), 125 App. Div. 710, 110 N. Y. Supp. 59; *Koch v. Semken* (1908), 58 Misc. 90, 93, 108 N. Y. Supp. 771; *Matter of O'Reilly* (1908), 59 Misc. 136, 140, 112 N. Y. Supp. 208; *Cochrane v. Alexandre* (1907), 56 Misc. 212, 107 N. Y. Supp. 587; *Garvey v. Union Trust Co.* (1898), 29 App. Div. 513, 516, 52 N. Y. Supp. 260; *Horsfield v. Black* (1899), 40 App. Div. 264, 267, 57 N. Y. Supp. 1006; *Embury v. Sheldon* (1877), 68 N. Y. 27, 237; *Matter of Crossman* (1889), 113 N. Y. 503, 560, 21 N. E. 180; *Cochrane v. Schell* (1894), 140 N. Y. 516, 536, 35 N. E. 971; *Gilman v. Reddington* (1861), 24 N. Y. 9, 19; *Schettler v. Smith* (1869), 41 N. Y. 328, 340; *Cook v. Lowry* (1884), 95 N. Y. 103; *Delafield v. Shipman* (1886), 103 N. Y. 463, 469, 9 N. E. 184; *Tompkins v. Verplanck* (1896), 10 App. Div. 572, 579, 42 N. Y. Supp. 412, modfg. (1898), 154 N. Y. 634, 49 N. E. 135; *Meldon v. Devlin* (1898), 31 App. Div. 146, 156, 53 N. Y. Supp. 172, affd. (1901), 167 N. Y. 573, 60 N. E. 1116; *Provost v. Provost* (1877), 70 N. Y. 141, 145; *Kilpatrick v. Johnson* (1857), 15 N. Y. 322, 324; *Phelps v. Phelps* (1858), 28 Barb. 121, 143, mod. (1861), 23 N. Y. 69; *Pray v. Hegeman* (1883), 92 N. Y. 508, 520; *Robison v. Robison* (1871), 5 Lans. 165, 167; *Grant v. Grant* (1878), 3 Redf. 283; *Crossman v. Crossman* (1887), 6 Dem. 148, 151, affd. (1888), 15 N. Y. St. Rep. 841, 1 N. Y. Supp. 103, affd. (1889), 113 N. Y. 503, 21 N. E. 180.

This section can apply to personal property only where the income is derived from some specific fund or at least from property so situated that its income can be readily distinguished from that of the other property. *Phelps v. Pond* (1861), 23 N. Y. 65, 83.

Where two of the trusts created from the residuary estate were for infant daughters of testator with remainders to their issue, if any, testator's next of kin, in the absence of such issue, under this section, made applicable to personalty by section 11 of the Personal Property Law, as the persons presumptively entitled to the next eventual estate, would take the income not validly accumulated. *Matter of Kohler* (1916), 96 Misc. 433, 160 N. Y. Supp. 669.

Rule as to undisposed profits also applies to personalty. *Matter of Harteau* (1912), 204 N. Y. 292, 97 N. E. 726; *Bloodgood v. Lewis* (1911), 146 App. Div. 86, 92, 130 N. Y. Supp. 621, revd. (1913), 209 N. Y. 95, 103 N. E. 1121.

Section cited in connection with § 61, ante. *St. John v. Andrews Institute* (1908), 191 N. Y. 254, 83 N. E. 981, modfg. (1907), 117 App. Div. 698, 118 N. Y. Supp. 808; *Matter of Roos* (1893), 4 Misc. 233, 24 N. Y. Supp. 862; *Mills v. Husson* (1893), 140 N. Y. 99, 104, 35 N. E. 422; *Matter of Dey Ermand* (1881), 24 Hun 1, 5; *Manice v. Manice* (1871), 43 N. Y. 303, 383; *Haxtun v. Corse* (1848), 2 Barb. Ch. 506, 518; *Potter v. M'Alpine* (1885), 3 Dem. 108, 126.

When income not "undisposed of."—A testatrix gave her residuary estate to her executors and trustees, upon the following terms: "To receive the rents, issues, income and profits thereof and to apply the whole, or such portions of such rents, issues, income and profits, as my said executors and trustees may deem advisable, for the use and benefit of my son Alphonse Joseph Stephani, during his natural life, and on the death of my said son I give, devise and bequeath all

of said rest, residue and remainder of my estate with the accumulations, if any, thereon, and including the amount of all devises or bequests that may lapse or be declared ineffectual, or void, to my said sister Marie Hill absolutely and forever; or in case she be then dead, to her children, share and share alike." At the time of the execution of the will the son was a life convict. Shortly after the death of the testatrix he was transferred to a State asylum for insane convicts, where he has since remained. In an action by the remainderman to construe the will, settle the accounts of the trustees and recover accumulated income, *held*, that the testatrix intended that the income not immediately applied to the use of her son should be held by the trustees, subject to his use during his life. That the income now in the hands of the trustees cannot be considered as undisposed of within the meaning of this section providing that undisposed profits belong to the persons presumptively entitled to the next eventual estate. *Hill v. Guaranty Trust Co.* (1914), 163 App. Div. 374, 148 N. Y. Supp. 601.

A residuary clause does not *ex necessitate rei* dispose of the rents and income, within the meaning of this section, which refers to a specific disposition of rents and profits to take effect pending the vesting in possession of an expectant estate. In every case where there is a specific trust fund and an expectant estate created therein, a residuary clause operates to prevent the holder of the next eventual estate from taking the income under this section. In no case where rents and profits pending the vesting in possession of an expectant estate are disposed of, can the holder of an expectant estate be entitled to such rents, so long as the will contains a residuary clause. *Matter of Kohler* (1916), 96 Misc. 433, 160 N. Y. Supp. 669.

A grantee has no "expectant estate" within the meaning of this section while a deed to him is held in escrow. *Hunter v. Hunter* (1853), 17 Barb. 25, 84.

§ 64. When expectant estates are deemed created.—Where an expectant estate is created by grant, the delivery of the grant, and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 54; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 41.

Application of section.—See *Tallman v. Tallman* (1893), 3 Misc. 465, 472, 23 N. Y. Supp. 734; *Knowlton v. Atkins* (1892), 134 N. Y. 313, 319, 31 N. E. 914; *Genet v. Hunt* (1889), 113 N. Y. 158, 166, 21 N. E. 91; *Everitt v. Everitt* (1864), 29 N. Y. 39, 71; *Van Cortlandt v. Laidley* (1891), 59 Hun 161, 169, 11 N. Y. Supp. 148.

§ 65. Estates in severalty, joint tenancy and in common.—Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which, respectively, shall, continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 55; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 43.

§ 66. When estate in common; when in joint tenancy.—Every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate, vested in executors or trustees as such, shall be held by them

in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter granted or devised.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 56; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 44.

Effect of section.—The rule of law provided by this section has been in effect since 1786, when the first law of this nature was passed. By this section the rule of construction which obtained at common law is reversed, and instead of there being a presumption that a devise to two persons makes them joint tenants, the presumption is that they are tenants in common, and this is only removed by an express declaration that they take as joint tenants, or by words from which it clearly appears that there is an intention to create a joint tenancy; and nothing less than this will suffice. *Gage v. Gage* (1887), 43 Hun 501, *affd.* (1889), 112 N. Y. 667, 20 N. E. 414.

The rule of the common law that a grant or devise to two or more persons without other words created a joint tenancy was abolished early in the history of this state. The rule which replaced it was embodied in the provision of the Revised Statutes which declared that "Every estate granted or devised to two or more persons, in their own right, shall be a tenancy in common unless expressly declared to be in joint tenancy" (1 R. S. 727, § 44), and has been re-enacted in this section. *Overheiser v. Lackey* (1913), 207 N. Y. 229, 100 N. E. 738.

Application of section.—This provision embraces all estates in lands, whatever may be their duration. *Blanchard v. Blanchard* (1875), 4 Hun 287, 289, *affd.* (1877), 70 N. Y. 615.

Under this section a joint tenancy can only be created by express words in a conveyance. *Bambauer v. Schleider* (1917), 176 App. Div. 562, 163 N. Y. Supp. 186.

Personal property; section applies.—See *Bliven v. Seymour* (1882), 88 N. Y. 469, 478; *Lane v. Brown* (1880), 20 Hun 382, 387; *Mills v. Husson* (1893), 140 N. Y. 99, 104, 35 N. E. 422; *Matter of Lent* (1892), 1 Misc. 264, 268, 22 N. Y. Supp. 917.

Tenants in common.—A testatrix, by will drawn by a layman, gave and bequeathed unto her sons John and Thomas a homestead, with the buildings thereon "jointly to be divided by said sons as they may deem fit and proper, or to be held jointly if they choose." This was the only devise or bequest to John. The testatrix also gave two legacies "to be paid by my son John Haddock from the proceeds of his bequest." It was *held*, that the testatrix intended to use the term "jointly" in the sense of "together," and that John and Thomas were seized of the homestead as tenants in common. *Matter of Haddock* (1915), 170 App. Div. 26, 155 N. Y. Supp. 630.

A devise to certain named heirs creates a tenancy in common unless expressly declared by the instrument to be a joint tenancy. *Matter of Tamargo* (1915), 170 App. Div. 10, 155 N. Y. Supp. 845, *revd.* (1915), 89 Misc. 674, 152 N. Y. Supp. 208, *revd.* on other grounds (1917), 220 N. Y. 225, 115 N. E. 462.

Unless there is something in the context of the will denoting that it was the intention of the decedent that his beneficiaries should take as joint tenants or as a class, the instrument will be construed so that they take as tenants in common or distributively. *Schneider v. Hellbron*, (1906), 115 App. Div. 720, 101 N. Y. Supp. 152.

Where the testator gave to each of three relatives a pecuniary legacy to be held in trust for them by the trustee and directing that the income thereof should be paid only to the beneficiaries; that each of them so electing should have a portion of the trust funds with which to purchase and furnish a home to be held by her in her own right free from any control whatsoever and that the remainder of the principal should remain in trust as a protection in old age, a tenancy in common

results, where the beneficial interests of the legatees are in reality divided, although the aggregate estate is directed to be held *in solido*. It will not be held to be a joint tenancy unless there be some express intimation that the interests of the beneficiaries are so held. *Matter of Hoffman* (1909), 65 Misc. 126, 121 N. Y. Supp. 100, *affd.* on rearg. (1901), 67 Misc. 334, 124 N. Y. Supp. 680, *affd.* (1910), 140 App. Div. 121, 124 N. Y. Supp. 1089, *mod.* (1911), 201 N. Y. 247, 94 N. E. 990.

A devise to sisters of a certain lot of land with the house thereon "to them and their heirs forever" is a devise to them as individuals and not as a class. The sisters take as tenants in common, and in the event of the death of one of them before that of the testator, only the undivided one-half of the land devised will pass to the survivor. *McDonald v. McDonald* (1902), 71 App. Div. 116, 75 N. Y. Supp. 674.

Where the nature of the tenancy of lessees in a leasehold interest is not declared in the lease, the tenants are tenants in common. *McPhillips v. Fitzgerald* (1902), 76 App. Div. 15, 78 N. Y. Supp. 631, *affd.* (1904), 177 N. Y. 543, 69 N. E. 1126.

A conveyance was made in which the grantees were named as "Mary Hommel and Frank Hommel, her husband." But the marriage was void and of no effect. In an action by the sister of Mary Hommel, after the latter's death, to partition the property, *held*, that the grantees took title as tenants in common, and that a prior parol agreement was insufficient to create a joint tenancy, or a tenancy by the entirety. *Bambauer v. Schleider* (1917), 176 App. Div. 562, 163 N. Y. Supp. 186.

See, generally, for estates in common, *Moffett v. Elmendorf* (1897), 152 N. Y. 475, 46 N. E. 845; *Price v. Pestka* (1900), 54 App. Div. 59, 60, 66 N. Y. Supp. 297; *Matter of Krummenacker* (1908), 60 Misc. 55, 56, 112 N. Y. Supp. 596; *Matter of Lapham* (1885), 37 Hun 15, 18; *Mott v. Ackerman* (1883), 92 N. Y. 539, 549; *Smith v. Edwards* (1882), 88 N. Y. 92, 103; *Stevenson v. Lesley* (1877), 70 N. Y. 512, 516; *Van Brunt v. Van Brunt* (1888), 111 N. Y. 178, 187, 19 N. E. 60; *Bliven v. Seymour* (1882), 88 N. Y. 469, 478; *Dana v. Murray* (1890), 122 N. Y. 604, 615, 26 N. E. 21; *Lane v. Brown* (1880), 20 Hun 382, 387; *Matter of Kimberly* (1896), 3 App. Div. 170, 38 N. Y. Supp. 399, *affd.* (1896), 150 N. Y. 90, 44 N. E. 945.

Partnership property.—Where partners each contributed equal sums toward the purchase of real property, taking the title in their individual names, the fact that the partners adopted their partnership name in dealing with the property and invested the rents or profits realized from the real property by purchasing securities in their joint names, or by jointly loaning the moneys, is not inconsistent with the theory that they held the title to the property as tenants in common under the above section. *Levine v. Goldsmith* (1903), 83 App. Div. 339, 82 N. Y. Supp. 299.

Joint tenancy.—See *Everitt v. Everitt* (1864), 29 N. Y. 39, 72; *Purdy v. Hayt* (1883), 92 N. Y. 453; *Coster v. Lorillard* (1835), 14 Wend. 342; *Tompkins v. Verplanck* (1896), 10 App. Div. 572, 576, 42 N. Y. Supp. 412, *modf.* (1898), 154 N. Y. 634, 49 N. E. 135; *Matter of Steencken* (1900), 51 App. Div. 417, 518, 64 N. Y. Supp. 660; *Troy & Albia H. R. Co. v. Smith* (1890), 33 N. Y. St. Rep. 203, 11 N. Y. Supp. 261; *Wurz v. Wurz* (1891), 15 N. Y. Supp. 720.

In order to create a joint tenancy the terms of the grant or devise must negative the presumption arising from the statute that it is the intention of the testator to create a tenancy in common. Testator made a devise in this language: "Second, I give and devise to my daughters Eliza Jane Marsh and Hester Marsh, jointly, the lot of ground with the dwelling house and improvements thereon situate in the City of New York and known as No. 15 Christopher Street." On examination of this and other clauses of the will, it was held, that in view of the indications that

the devise in question was formulated by a layman who did not use the word "jointly" in its distinctively technical sense, it is not a sufficiently express declaration of an intent to create a joint tenancy to negative the presumption established by our statute that a tenancy in common was intended. *Overhelser v. Lackey* (1913), 207 N. Y. 229, 100 N. E. 738.

A joint tenancy in a mortgage standing in the names of husband and wife may be established by parol evidence of their intent to hold as such. *Matter of Kaupper* (1910), 141 App. Div. 54, 125 N. Y. Supp. 898, *affd.* (1911), 201 N. Y. 534, 94 N. E. 1095.

Tenants by entireties, section not applicable. See *Jackson v. Stevens* (1819), 16 Johns. 109; *Wright v. Sadler* (1859), 20 N. Y. 230; *Meeker v. Wright* (1879), 76 N. Y. 262; *Zortlein v. Bram* (1885), 100 N. Y. 13, 2 N. E. 388; *Bertles v. Nunan* (1883), 92 N. Y. 152; *Goelet v. Gori* (1860), 31 Barb. 314; *Miller v. Miller* (1871), 9 Abb. Pr. (N. S.) 444; *Stelz v. Shreck* (1891), 128 N. Y. 263, 268, 28 N. E. 510, 13 L. R. A. 325; *Beach v. Hollister* (1875), 3 Hun 519.

The creation of a tenancy by the entirety is permitted by law and a husband may by conveyance to himself and his wife create such a tenancy, thereby reserving to himself the same rights he would have under a deed from a third person. *Matter of Klatzl* (1915), 216 N. Y. 83, 110 N. E. 181, *revg.* (1915), 166 App. Div. 921, 151 N. Y. Supp. 1125.

A tenancy by the entirety can only exist where there is a valid marital relation between the grantees at the time of the conveyance. Although a conveyance is made to a man and woman in the form, "husband and wife, as tenants by the entirety," they do not take as tenants by the entirety with a right of survivorship, when in fact, although living together, there was no marriage between them, one of the parties being bound by an existing marriage. *Perrin v. Harrington* (1911), 146 App. Div. 293, 130 N. Y. Supp. 944.

Status of tenants by the entirety.—Husband and wife as tenants by the entirety do not hold as tenants in common or as joint tenants. Each is seized of the entirety *per tout et non per my*, and upon the death of either the survivor takes all, not by virtue of survivorship simply, but by virtue of the original grant which vested the entire estate in each grantee. Where one of two tenants by the entirety died before the enactment of the statute allowing abutting owners damages caused by a change of grade in the streets of New York, the survivor having title to the whole parcel was entitled to all the damages caused by the change of grade, for the right did not accrue until the act was passed. *People ex rel. Bennett v. Dickey* (1912), 148 App. Div. 663, 133 N. Y. Supp. 221.

Tenants by the entirety during their joint lives are each entitled, as tenants in common, to one-half the rents and income. *Maekotter v. Maekotter* (1911), 74 Misc. 214, 131 N. Y. Supp. 815.

Section cited.—*Matter of Hoffman* (1910), 140 App. Div. 121, 129, 124 N. Y. Supp. 1089, *modfd.* (1911), 201 N. Y. 247, 94 N. E. 990; *Matter of Bleckwehl* (1913), 80 Misc. 468, 742 N. Y. Supp. 449; *Matter of Helling* (1914), 84 Misc. 684, 147 N. Y. Supp. 799.

§ 67. Sale or lease of real property held by tenant for life with contingent remainder or remainders over to persons whose identity is unknown.—In any case where real property is devised by will or conveyed by deed to a person for life, with contingent remainder or remainders over, to persons the identity of whom can not be definitely ascertained until the death of the person entitled to the life estate, the supreme court may, by order, on such terms and conditions as seem just and proper, authorize the sale

or lease of such real property, or any part thereof, whenever it appears to the satisfaction of the court that said real property, or some portion thereof, has become so unproductive or such circumstances or conditions have arisen subsequent to the devise or deed that it is for the best interest of the life tenant and of the remaindermen that a sale or lease should be had, or that for other peculiar reasons, or on account of other peculiar circumstances, it is for the best interest of the life tenant and the remaindermen that a sale or lease should be had. The supreme court shall not grant such an order, unless it appears to the satisfaction of such court, that a written notice, stating the time and place of the application therefor, has been served upon the life tenant, and upon every other person in being having an estate, vested or contingent, in reversion or remainder in said real property at least eight days before the making thereof. If such beneficiary or other person is an adult without the state, or is a minor, lunatic, person of unsound mind, habitual drunkard or absentee, notice shall be served on such beneficiary or other person in such manner as the court or a justice thereof may prescribe. Upon the return day of the notice the court shall, upon its own motion, appoint a special guardian for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by a committee twenty-one years. (*Amended by L. 1913, ch. 55.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 57, as added by L. 1903, ch. 432.

Consolidators' note.—Sections 67, 70, 107, 116 require that every person in being, having an estate, vested or contingent, in reversion or remainder, in the real property in question, shall either be served with notice or shall execute a conveyance. These sections cannot, in the minds of experienced conveyancers, be safely applied in the large class of cases in which the remainder goes to the heirs of a living person. In such a case, the heirs, of course, are not ascertainable at the time when the proceeding is taken, and may include collateral relatives to the remotest degree. It seems, that in such cases it should be enough to regard the heirs presumptive as representing the remainder. In many cases these useful sections cannot be resorted to owing to the impossibility of bringing in all of the possible heirs of a living person.

The sections should also be made applicable to remainders "which open to let in," even though not classed as contingent remainders.

When motion to compel completion of purchase denied.—Where certain real estate was devised to testator's daughter for life and on her death to her surviving issue and the will directs and empowers the executors upon the death of testator's daughter without issue to sell the property and divide the proceeds among certain designated religious and charitable corporations, no power to receive the rents and profits being conferred upon the executors, the legal title to the remainder in fee is not vested in them, and testator's daughter having no issue there was no person in being "having an estate vested or contingent, in reversion or remainder" in the property on whom the notice of an application for a sale thereof under this section, as amended by chapter 55 of the Laws of 1913, could be served, a motion to compel a purchaser of the property at a sale made under the statute to complete his purchase must be denied, and his deposit returned

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to him. *Matter of Callahan* (1916), 96 Misc. 74, 159 N. Y. Supp. 942, *affd.* (1917), 176 App. Div. 906, 162 N. Y. Supp. 1113.

Section cited.—*Matter of Callahan* (1917), 176 App. Div. 906, 162 N. Y. Supp. 1113.

§ 68. **Application, how made.**—The application must be made by petition duly verified, which shall set forth the provisions of the will or the deed creating the estate, the condition of the estate and the particular facts which make it necessary or proper that the application should be granted. After taking proof of the facts either before the court or by a referee and hearing the parties and fully examining into the matter, the court must make an order upon the application. In case the application is granted, the order must authorize the real property described in the petition to be sold or leased upon such terms and conditions as the court may prescribe, but in the case of a lease the term thereof shall not exceed twenty-one years. (*Amended by L. 1913, ch. 55.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 58, as added by L. 1903, ch. 432.

§ 69. **Sale, how conducted.**—The sale shall be made by a referee appointed by the court for that purpose and such sales may be either at public auction or by private contract, but subject in all respects to confirmation by the court before the deed is delivered and the sale consummated. In case a sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such sale and must direct that the proceeds of such sale be paid into the hands of some trust company authorized by law to act as trustee or to some person or persons who shall thereby become trustee or trustees for such life tenant and remaindermen, and must require the trustee to give a bond in such an amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting of all moneys received by him pursuant to said order. ~~When the confirmation of the referee's report of sale by order of the court, the referee must execute, as directed by the court, a deed of said real property so sold.~~

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 59, as added by L. 1903, ch. 432.

§ 70. **Instruments upon sale or lease.**—A deed or lease made pursuant to a final order granted as provided in the foregoing sections sixty-seven and sixty-eight shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being, interested in the real property aforesaid, or having estates, vested or contingent, in reversion or remainder in said real property, but before the order directing the sale or lease can be made, all adult persons not under disability having an interest in said real estate, vested or contingent, in reversion or remainder, must make and file with the clerk of the court in which the proceedings have been instituted, a written instrument, duly

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executed and acknowledged, consenting that such an order of sale or lease may be made, and in no event shall such order be made without the like written consent of the life tenant if not suffering from disability. (*Amended by L. 1913, ch. 55.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 60, as added by L. 1903, ch. 432.

§ 71. **Disposition of proceeds of sale.**—The trustees appointed by the court of funds realized from the sale of real property under these provisions shall, unless otherwise ordered by the court, invest such funds in the manner and form prescribed and regulated by law, relative to investment of trust funds by trustees, and shall pay and apply the net income, after deducting all lawful expenses and commissions, to the use of the life tenant during life and upon the death of the life tenant pay over and distribute the principal to and among the remaindermen entitled thereto in accordance with the order of the court upon an accounting.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 61, as added by L. 1903, ch. 432.

§ 72. **Release of rents reserved by leases in perpetuity.**—1. Any person interested in lands held under a lease in perpetuity, upon which no rent has been paid for at least twenty years, may present his petition to the courts mentioned in this section asking that it be declared that the rents and reversion have been released to the owner of the fee. Such petition shall be verified, shall describe the lease and allege that the rents and reversion have been released, and shall state such facts as the petitioner can ascertain relative to the execution of a release and the identity of the persons who would otherwise be the present owners of the rents and reversion and the last known owner thereof.

2. Such petition may be presented to the supreme court or to the county court of the county where the lands are situated. The court may thereupon order all persons interested to show cause at a certain time and place why the rents and reversion should not be declared to have been released. A description of the lease and lands affected thereby and the name of the last known owner of the rents and reversion shall be specified in such order, and the order shall be published in such newspaper or newspapers and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

3. The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the facts stated in the petition. Upon being satisfied that the matters alleged in the petition are true, the court may make an order declaring that the rents and reversion have been released to the owner of the fee. The non-payment of rent under any such lease for twenty years shall be presumptive evidence of such a release. The entry of such order in the office of the clerk of the county where such lands are situated shall have the same effect as a

release of such rents and reversion to such owner then duly executed and recorded. The county clerk shall note on the margin of the record of the original lease a minute of the entry of such order.

Source.—L. 1900, ch. 227.

ARTICLE IV.

USES AND TRUSTS.

Section 90. Executed uses existing.

91. Certain uses and trusts abolished.
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93. Trustee of passive trust not to take.
94. Grant to one where consideration paid by another.
95. Bona fide purchasers protected.
96. Purposes for which express trusts may be created.
97. Certain devises to be deemed powers.
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99. When an authorized trust is valid as a power.
100. Trustee of express trust to have whole estate.
101. Qualification of last section.
102. Interest remaining in grantor of express trust.
103. What trust interest may be alienated.
104. Transferee of trust property protected.
105. When trustee may convey or exchange trust property.
106. When trustee may lease trust property.
107. Notice to beneficiary and other persons interested where real property affected by a trust is conveyed, mortgaged or leased, and procedure thereupon.
108. Person paying money to trustee protected.
109. When estate of trustee ceases.
110. Termination of trusts for the benefit of creditors.
111. Trust estate not to descend.
112. Resignation or removal of trustee and appointment of successor.
113. Grants and devises of real property for charitable purposes.
114. Certain educational and other charitable uses authorized.
- 114-a. Trusts for care of cemetery lots, et cetera.
115. Certain grants for charitable uses regulated.
- * 166. Executors', fiduciaries' and trustees' investments in certain stocks regulated.
117. Commissions of trustees.

§ 90. Executed uses existing.—Every estate which is now held as a use, executed under any former statute of the state, is confirmed as a legal estate.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 70; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 46.

§ 91. Certain uses and trusts abolished.—Uses and trusts concerning real property, except as authorized and modified by this article, have been

* So in original.

abolished; every estate or interest in real property is deemed a legal right, cognizable as such in the courts, except as otherwise prescribed in this chapter.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 71; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 45.

Consolidators' note.—The language of the Revised Statutes is much more exact. As § 91 now stands, it contains two principal errors: Uses and trusts were *sub modo* abolished by 1 R. S., 727, § 45. But 1 R. S., 727, § 45, was repealed by L. 1896, ch. 547, § 300, so that as the law now stands, there is no plain enactment abrogating the old law of uses and trusts, as it stood before 1829. It seems very clear that uses and trusts, except as authorized and modified by our present article on Uses and Trusts, should be directly abolished by a plain enactment, present in point of time, but futuristic in action. There is no need to refer the abolition back to 1829. Uses and trusts, between 1829 and 1896, depend on the Revised Statutes, and even uses executed by that statute are abundantly protected without any special reference in the present "Real Property Law."

The language of the Revised Statutes, concerning estates and interests in lands, regarded as "legal rights cognizable in the courts of law," should also be restored. The present language of the section seems to imply a class of legal rights not cognizable in the courts, which is impossible, under the established maxim: *ubi jus ibi remedium*. Its literal effect is also to abolish equitable rights in real property.

In their desire not to recognize courts of law, as contradistinguished from courts of equity, the late revisers ignored the fact, that the reform of 1846 was the fusion, and not the abolition, of courts of law and courts of equity, and that in this state a legal right is still cognizable in a court of law only. Equitable rights over real property are still recognized and protected. They should not be turned into legal rights as was unintentionally done by the late revisers in this section. Equitable rights are fixed and protected by the constitution of the state, and the legislature is powerless to turn them into legal rights without an amendment to the constitution. The language of the Revised Statutes is, therefore, still relevant to present conditions and should be restored. Gould v. Cayuga County Bank, 86 N. Y. 75, 83; Peter v. Delaplaine, 49 N. Y. 362, 370; Chipman v. Montgomery, 63 N. Y. 221, 230; Town of Mentz v. Cook, 108 N. Y. 504; Corscadden v. Haswell, 88 App. Div. 158; Gilbert v. Brunell, 92 App. Div. 284.

The following is suggested in place of the section now in the statute:

"Uses and trusts, except as authorized and modified in this article are abolished: and every estate and interest in lands, shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this chapter."

Object and effect of article.—The object sought by this statute, as stated by the revisers in their notes, was to limit the creation of express trusts to those cases where the purposes of the trust seemed to require that the legal estate should pass to the trustee, and to give legal effect to a purpose, where such a necessity did not exist, by permitting its execution as a power in trust, if contemplating the performance of some act. Townshend v. Frommer (1891), 125 N. Y. 446, 458, 26 N. E. 805. See also Boyce v. City of St. Louis (1859), 29 Barb. 650, 657.

The revisers and the legislature intended simply, that legal estates impressed with trust duties and powers should be created only in the cases specified. The provisions of the statute were aimed against the attempt to create such estates or titles, but not against the duty, trust or power. Downing v. Marshall (1861), 23 N. Y. 366, 379.

This section in abrogating all active trusts, except the few particularly specified, has reanimated them under the name of powers which are left without restriction,

provided the purpose of the limitation or power be in itself a lawful one. *Downing v. Marshall* (1861), 23 N. Y. 366, 380.

Charitable uses and trusts are not excepted from the operations of the provisions of this article, except such as are authorized thereby. *Clemens v. Clemens* (1867), 37 N. Y. 59, 76; *Holmes v. Mead* (1873), 52 N. Y. 332; *People v. Powers* (1895), 147 N. Y. 104, 109, 41 N. E. 432, 35 L. R. A. 502; *Village of Corning v. Rector, etc.*, *Christ Church* (1890), 33 N. Y. St. Rep. 766, 11 N. Y. Supp. 762. A charitable trust was void at common law. *Levy v. Levy* (1865), 33 N. Y. 97, 107.

But the act of 1893 (see § 113) "to regulate gifts for charitable purposes" restored the ancient law touching charitable uses for indefinite beneficiaries, and the practice governing the administration of such trusts. *Allen v. Stevens* (1899), 161 N. Y. 122, 55 N. E. 568.

The English system of indefinite charitable uses has no existence in this state, and no place in our system of jurisprudence. *Bascom v. Albertson* (1866), 34 N. Y. 584; *Cottman v. Grace* (1889), 112 N. Y. 299, 306, 19 N. E. 839, 3 L. R. A. 145; *People v. Powers* (1895), 147 N. Y. 104, 109, 41 N. E. 432, 35 L. R. A. 502; *Follett v. Badeau* (1882), 26 Hun 253, 257.

A trust to enforce a forfeiture against a corporation, in case of non-compliance with conditions subsequent, is not authorized by this statute. *Adams v. Perry* (1871), 43 N. Y. 487, 496.

Actions with reference to trust of personalty.—Although these provisions pertain to real estate, trusts may be created in reference to personal estate as well, and when so created, the creditor or receiver may maintain actions in reference to such estate in the same cases in which it may be maintained in reference to real property. *Gifford v. Rising* (1889), 51 Hun 1, 3, 3 N. Y. Supp. 392.

§ 92. When right to possession creates legal ownership.—Every person, who, by virtue of any grant, assignment or devise, is entitled both to the actual possession of real property, and to the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest; but this section does not divest the estate of the trustee in any trust existing on the first day of January, eighteen hundred and thirty, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 72; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 47, 48.

History and enactment of section.—See *Downing v. Marshall* (1861), 23 N. Y. 366, 379; *Salsbury v. Parson*, (1885), 36 Hun 12.

Purpose and effect.—It was the design of the legislature, in the revision of the statute of uses, to abolish technical and useless distinctions between the title and the use, and to convert the estate of a beneficiary into a legal estate, commensurate with the beneficial interest intended, whenever the trust was of a passive or formal character, and the actual possession and fruits of possession were the beneficiary's. *Greene v. Greene* (1891), 125 N. Y. 506, 511, 26 N. E. 739. But it was not the intention of the statutes to convert an active trust previously existing in which the trustee had the management of the land, and the receipt and payment of the rents and income, into a legal estate in the hands of the *cestuis que trust*. *Anderson v. Mather* (1870), 44 N. Y. 249, 258.

The effect of this section is to turn all merely nominal or naked estates in

trust in real property into legal estates in the persons having the beneficial interest therein. *Sterrick v. Dickinson* (1850), 9 Barb. 516, 521.

When party has legal title.—The statute vests the legal title in a party entitled to the possession of land and to the rents and profits during his life. *Verdin v. Slocum* (1877), 71 N. Y. 345, 347; *Greene v. Greene* (1891), 125 N. Y. 506, 511, 26 N. E. 739; *Rose v. Hatch* (1891), 125 N. Y. 427, 432, 26 N. E. 467; *Wendt v. Walsh* (1900), 164 N. Y. 154, 159, 58 N. E. 2; *Post v. Hover* (1859), 30 Barb. 312, 320, *affd.* (1865), 33 N. Y. 593; *Matter of Craig* (1847), 1 Barb. 33; *Wright v. Douglas* (1853), 7 N. Y. 564, 570; *Cushney v. Henry* (1834), 4 Paige 345. See also *Salsbury v. Parson* (1885), 36 Hun 12.

A party must be entitled to both the "actual possession" and the receipt of the "rents and profits," in order that his beneficial interest may be deemed a legal estate. *Germond v. Jones* (1842), 2 Hill 569, 574. See also *Harvey v. Brishin* (1888), 50 Hun 376, 380, 3 N. Y. Supp. 676, *affd.* (1894), 143 N. Y. 151, 38 N. E. 108.

A conveyance to A. in trust for B. in trust for C., at once vests the title in C., and would vest it in the *cestui que trust* last named, however numerous the trusts created. *Johnson v. Fleet* (1835), 14 Wend. 176, 180.

The law of this state does not tolerate the holding of the title to lands by persons not beneficially interested therein except upon some valid trust properly manifested. *Hubbard v. Gilbert* (1881), 25 Hun 596, 599.

A devise of land to trustees directing them to execute and deliver to a corporation a deed thereof for the uses and purposes set forth in the will creates no valid trust in such trustees and gives them no title but vests immediately and absolutely in the corporation. *Adams v. Perry* (1871), 43 N. Y. 487.

Infants being the real beneficiaries, it was held that the land passed to and vested in them subject to the execution of a general trust power. *Syracuse Sav. Bank v. Holden* (1887), 105 N. Y. 415, 11 N. E. 950.

Upon a conveyance of real property to the grantee and her heirs, in trust for her two children named in the deed, "and the survivor of them," such children take the use for life only, which by virtue of the Statute of Uses vested in them as a legal estate of like quality, and, upon the death of the survivor of the two children, the remainder in fee vests in the heirs of the grantee. *Kelly v. Kremm* (1912), 78 Misc. 576, 138 N. Y. Supp. 626.

Life estate created by possession and right to rents and profits.—Where a testator provided in his will that at the death of his son all his real and personal estate should be given to a grandson when the latter reached the age of twenty-one years, and the son was given the possession of the real estate and of the rents and profits thereof, and power of sale for the benefit of the grandson, there was created a life estate under this section. *Matter of McCahill* (1916), 174 App. Div. 520, 162 N. Y. Supp. 996.

The person who pays the purchase price of land the title to which is taken by others under an agreement to hold it in trust for the purchaser, he being entitled to possession and rents and profits, is vested with the title. *Mullin v. Mullin*, (1907), 119 App. Div. 521, 104 N. Y. Supp. 323.

Where land is conveyed to one in trust for the use of another, his heirs and assigns, without limitation and the grantee to use, at the same time, executes a mortgage for part of the purchase-money, the legal estate vests in the *cestui que use*, subject to the mortgage. *Rawson v. Lampman* (1851), 5 N. Y. 456.

Estate of trustee vests in beneficiaries after termination of trust.—Where the purpose for which an active trust was created has been accomplished, the estate of the trustee is terminated and the title vests absolutely in the beneficiaries. *Hopkins v. Kent* (1895), 145 N. Y. 363, 40 N. E. 4; *Selden v. Vermilya* (1850), 3 N. Y. 525.

Where real estate is devised to a trustee for a particular purpose, it is vested in him as long as the execution of the trust requires it, and no longer, and it then vests in the person beneficially entitled to it. *Nicoll v. Walworth* (1847), 4 Dem. 385.

A life estate in a trustee and the remainder in a beneficiary are not inconsistent. *Greer v. Chester* (1891), 62 Hun 329, 334, 17 N. Y. Supp. 238, *affd.* (1894), 131 N. Y. 629, 30 N. E. 863.

A sole surviving trustee for the ultimate beneficiaries was under the terms of a will the beneficiary of the estate for a period of years. The giving to such trustee the use of the real estate during such period would ordinarily vest in him a legal estate and not constitute a trust were it not for the fact that his possession of the real estate was shared by his co-trustee; but as soon as that trustee died he became entitled to the sole possession as well as to the rents and profits, and therefore his interest became a legal estate, in which his beneficial interest merged and so continued until the same was terminated by the period of time provided for by the terms of the will. And it follows that there is nothing in the provision that makes him a trustee for himself that is inconsistent with his acts as trustee for the ultimate beneficiaries for the period of time specified, and as the holder of a legal estate there is nothing in the provisions of the trust that impairs his right to exercise a power of sale given by the will. *Weeks v. Frankel* (1910), 197 N. Y. 304, 90 N. E. 969, *revg.* (1909), 128 App. Div. 223, 112 N. Y. Supp. 562.

Equity will not compel a trustee to convey the legal title to the party beneficially interested where there is a mere naked trust; this results from the statute itself. *Ring v. McCoun* (1851), 10 N. Y. 268; *Ennis v. Brown* (1896), 1 App. Div. 22, 36 N. Y. Supp. 737.

A nominal trust of lands becomes vested by the statute in the *cestui que trust* who may maintain ejectment for the recovery of such lands in his own name without a previous conveyance from the trustee. *Welch v. Allen* (1839), 21 Wend. 147.

A formal passive trust attempted to be created may be executed by vesting the title in the beneficiaries. *Syracuse Sav. Bank v. Holden* (1887), 105 N. Y. 415, 418, 11 N. E. 950.

A covenant to stand seized is still a valid mode of conveyance and may be transformed by the statute into an estate for life. *Eysaman v. Eysaman* (1881), 24 Hun 430, 434.

Devise to testator's wife.—Although a devise of real property to a testator's wife in trust for herself and four children, is void as a trust, the widow, under this section, takes a legal estate in the land for her life to the extent of her beneficial interest therein. *Jacoby v. Jacoby* (1905), 47 Misc. 427, 94 N. Y. Supp. 260, *affd.* (1906), 113 App. Div. 913, 100 N. Y. Supp. 1122, *affd.* (1907), 188 N. Y. 124, 80 N. E. 676.

Same person as trustee and beneficiary.—Where a will constitutes the same person trustee and beneficiary of a trust in real property, he, as trustee, has the legal title to the real property and is entitled to its possession, and as beneficiary is also entitled to the receipts of the rents and profits, and consequently is to be deemed to have a legal estate therein of the same quality and duration, and subject to the same conditions as his beneficial interest. *Tuck v. Knapp* (1903), 42 Misc. 140, 85 N. Y. Supp. 1001.

While the same person cannot be at the same time trustee and beneficiary of the same interest, the fact that a trustee has a beneficial interest in real estate does not prevent him from taking charge of the same for himself and others having a like interest, and one having a one-third interest in lands, may hold the same on a trust to manage two-thirds of the property for other beneficiaries. *Ogilby v.*

Hickok (1911), 144 App. Div. 61, 128 N. Y. Supp. 860, *affd.* (1911), 202 N. Y. 614, 96 N. E. 1123.

Where the grantor is the sole beneficiary having, by the terms of the deed, the right to the actual possession and use of the premises, no title vests in the trustee. *Wainwright v. Low* (1892), 132 N. Y. 313, 319, 30 N. E. 747.

Where the grantee has himself a beneficial interest in the grant and he is something more than the holder of the mere nominal title, this section does not apply. *King v. Townshend* (1894), 141 N. Y. 358, 364, 36 N. E. 513; *Matter of Clark* (1891), 62 Hun 275, 283, 17 N. Y. Supp. 93.

Estate of judgment creditors.—Where land belonging to a judgment debtor is sold under execution to one who acknowledges in writing that he holds it and the proceeds thereof, for the account of two judgment creditors of the debtor, the judgment creditors are tenants in common under this section. *Chittenden v. Gates* (1897), 18 App. Div. 169, 45 N. Y. Supp. 768.

See, generally, *Bennett v. Garlock* (1880), 79 N. Y. 302; *New York Dry Dock Co. v. Stillman* (1864), 30 N. Y. 174; *Frazer v. Western* (1845), 1 Barb. Ch. 220, *affd.* (1846), How. App. Cas. 448; *Bogert v. Perry* (1819), 17 Johns. 351; *Griffen v. Ford* (1857), 14 N. Y. Super. (1 Bosw.) 123, 141; *Townshend v. Frommer* (1891), 125 N. Y. 446, 26 N. E. 805; *Fellows v. Emperor* (1852), 13 Barb. 92, 99; *Watson v. Le Row* (1849), 6 Barb. 481; *Welch v. Stillman* (1842), 2 Hill 491; *Wright v. Douglass* (1853), 7 N. Y. 564, 570; *Hutchins v. Van Vechten* (1893), 140 N. Y. 115, 35 N. E. 446; *Shuler v. Shuler* (1909), 63 Misc. 604, 118 N. Y. Supp. 629, *revd.* (1893), 137 App. Div. 515, 121 N. Y. Supp. 869.

§ 93. **Trustee of passive trust not to take.**—Every disposition of real property, whether by deed or by devise, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to another to the use of, or in trust for, such person; and if made to any person to the use of, or in trust for another, no estate or interest, legal or equitable, vests in the trustee. But neither this section nor the preceding sections of this article shall extend to the trusts arising, or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this chapter.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 73; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 49, 50.

Application.—The provision of this section that a disposition of property to one in trust for another is invalid if it be intended that the beneficiary have the right to both possession and profits, is limited to a passive trust for a person intended to have the whole and absolute use and has no application where the disposition of the property is to one grandchild in one event and to another in the alternative. *Matter of Martinus* (1909), 65 Misc. 135, 121 N. Y. Supp. 106.

Passive trusts.—A trust created “for the use and benefit of the estate of C.” is passive and the title immediately vests in the beneficiary. *Gueutal v. Gueutal* (1906), 113 App. Div. 310, 98 N. Y. Supp. 1002. A gift to a designated person, in trust for residuary legatees, one of whom is the trustee, without imposing any active duty or function, is a passive trust which transmits no title to the trustee. *Jacoby v. Jacoby* (1907), 186 N. Y. 124, 80 N. E. 676.

Conveyance merely for the use of, and as agent for a certain person creates a passive trust. *Werner v. Wheeler* (1911), 142 App. Div. 358, 363, 127 N. Y. Supp. 158.

Where a testator, after giving a portion of his estate to two of his children who were not self-supporting, devises the remainder in trust for three minor

children, and authorizes his executors to sell his real estate and stocks for the purpose of maintaining and supporting said children, and there is no language in the will indicating the duration of such trust or the disposition of the property after its termination, the provision constitutes a passive trust, and the property passes directly to the children named, the executors simply having a power of sale without title. *Steinert v. Steinert* (1914), 161 App. Div. 841, 146 N. Y. Supp. 106.

The following cases are among those in which trusts have been declared to be passive and therefore ineffectual to pass title to the trustee: *Fisher v. Hall* (1869), 41 N. Y. 416; *Van Duzen v. Trustees, etc.* (1867), 4 Abb. Ct. App. Dec. 465; *Verdin v. Slocum* (1877), 71 N. Y. 345; *Mott v. Ackerman* (1883), 92 N. Y. 539; *Woerz v. Rademacher* (1890), 120 N. Y. 62, 23 N. E. 1113; *Seidelbach v. Knaggs* (1899), 27 Misc. 110, 111, 58 N. Y. Supp. 199, *affd.* (1899), 44 App. Div. 169, 60 N. Y. Supp. 774, *affd.* (1901), 167 N. Y. 585, 60 N. E. 1120.

When title vests in beneficiary.—In order that the legal title may vest in the beneficiary under this section, it is essential that the trust be declared by deed or conveyance in writing; and the trust must have existed at the time of the grant to the trustee, although it may have been effectually declared afterwards. *Bates v. L. M. Co.* (1891), 130 N. Y. 200, 205, 29 N. E. 102.

Where a testator after dividing his property into several parts devises one share thereof to a trustee in trust for the trustee's wife during her natural life and to heirs forever subject to a life estate to the husband after the death of the wife, the title to the premises devised vests directly in the wife and not in the trustee during her life. *Noble v. Cromwell* (1858), 26 Barb. 475, 479, *affd.* (1859), 3 Abb. Ct. App. Dec. 382.

If a trust fund consists of realty an attempt to give the beneficiary absolute control over such fund would, under the above section, and §§ 92 and 149 of the Real Property Law, have rendered the entire trust void and caused the title to the whole property to vest in the beneficiary instead of in the trustee. *Ullman v. Cameron* (1904), 92 App. Div. 91, 87 N. Y. Supp. 148.

Where executors were appointed trustees in these words "I hereby constitute and appoint (them) the trustees of my daughters and grandchildren during their respective lives" it was held that this provision was inoperative as to the real estate and left the legal title in the children and grand children. *Fowler v. De Pau* (1857), 26 Barb. 224, 235.

Devises by implication will be upheld where no gift of the property is made in formal language. *Ramsay v. DeRemer* (1892), 65 Hun 212, 20 N. Y. Supp. 143.

Implied and resulting trusts, from their very nature, are not included in or affected by the provisions of this article. *Foote v. Foote* (1870), 58 Barb. 258, 262. A trust by implication of law does not vest title in the beneficiary under the preceding section. *Johnston v. Spicer* (1887), 107 N. Y. 185, 191, 13 N. E. 753.

See, generally, as to effect and application of section, *Salsbury v. Parson* (1885), 36 Hun 12, 15; *Helck v. Refnheimer* (1887), 105 N. Y. 470, 12 N. E. 37; *Wendt v. Walsh* (1900), 164 N. Y. 154, 58 N. E. 2; *Cassagne v. Marvin* (1893), 51 N. Y. St. Rep. 406, 22 N. Y. Supp. 431, *revd.* (1894), 143 N. Y. 292, 38 N. E. 285, 25 L. R. A. 670; *Burns v. Allen* (1895), 89 Hun 552, 557, 35 N. Y. Supp. 342, *affd.* (1897), 154 N. Y. 741, 49 N. E. 1094; *Hotchkiss v. Elting* (1861), 36 Barb. 38, 44; *Matter of England* (1910), 69 Misc. 523, 127 N. Y. Supp. 881.

§ 94. Grant to one where consideration paid by another.—A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a

fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment to the person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration; or,

2. In violation of some trust, purchases the property so conveyed with money or property belonging to another.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 74; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 51–53.

Purpose and effect of section.—This section and the provisions of the Revised Statutes from which it is derived, change the common-law rule so as to prevent a trust resulting in favor of the person paying the consideration. Such a trust now results in favor of existing creditors only. *Irving National Bank v. Gray* (1916), 174 App. Div. 29, 160 N. Y. Supp. 341.

This section was intended to prevent a secret trust in favor of the person paying the consideration. *Reitz v. Reitz* (1880), 80 N. Y. 538; *Watson v. Le Row* (1849), 6 Barb. 481, 489. It abolishes only the common law trust for the benefit of an individual from whom the consideration for a grant issues and resulting from the fact of payment of the consideration. *Carr v. Carr* (1873), 52 N. Y. 251, 260.

A person intentionally investing money in the purchase of land in the name of another to whom an absolute conveyance is made can now claim no resulting trust. *Day v. Roth* (1858), 18 N. Y. 448, 455; *Norton v. Stone* (1840), 8 Paige 222, 225. It was clearly within the power of the legislature to abolish resulting trusts. *Wright v. Douglass* (1850), 10 Barb. 97, 102, revd. (1853), 7 N. Y. 564.

The law now considers that there is no reason why a person, who is able to advance money for the purchase of a landed estate, should allow the title to be taken for his benefit in the name of another, except for some sinister or fraudulent purpose, and it will not allow him to claim any benefit of the transaction in the shape of a resulting or implied trust. * * * But while the law prevents him, who will thus advance his money and permit the title to be taken in the name of another, from deriving any benefit from the purchase, it takes care that his creditors shall not suffer by his parting with his money. *Woodhull v. Osborne* (1836), 2 Edw. Ch. 614, 619.

At common law where one person paid the consideration for real estate and a conveyance was taken in the name of another a trust resulted to the person paying the money, but the statute has modified this rule. *Foot v. Bryant* (1872), 47 N. Y. 544; *Watson v. Le Row* (1849), 6 Barb. 481, 488.

Qualification of section.—The above section, providing that where a grant of real property is made to one person for a valuable consideration paid by another, no trust results in favor of the person paying the consideration, must be read in connection with § 270, post, which provides “nothing contained in this article abridges the power of courts of equity to compel the specific performance of agreements in cases of part performance.” *Quinn v. Quinn* (1902), 69 App. Div. 598, 75 N. Y. Supp. 83.

Application limited to real estate.—*Robbins v. Robbins* (1882), 89 N. Y. 251. Since land bought by the joint funds of a partnership is treated in equity as personal property, this section does not apply. *Fairchild v. Fairchild* (1875), 5 Hun 407, affd. (1876), 64 N. Y. 471; *Fischer v. Boecher* (1892), 43 N. Y. St. Rep. 622, 17 N. Y. Supp. 814; *Greenwood v. Marvin* (1888), 111 N. Y. 423, 19 N. E. 228.

Express agreement of parties; section does not apply.—This section has no appli-

cation to a case where an express trust has been created or where equities have arisen by the agreement of parties; it only applies to a case in which there exists no express trust or equities other than the payment of the consideration by the person other than the one who takes the title. *Gage v. Gage* (1894), 83 Hun 362, 31 N. Y. Supp. 903; *Smith v. Balcom* (1897), 24 App. Div. 437, 441, 48 N. Y. Supp. 487. It has no application to a case where the trust is expressly reserved by the instrument making the grant, but declared by another instrument relieving it from the effect of a secret trust. *Woerz v. Rademacher* (1890), 120 N. Y. 62, 67, 23 N. E. 1113; *Ludlow v. Van Ness* (1861), 21 N. Y. Supp. (8 Bosw.) 178, 192. And does not prevent the operation of any agreement in part performance of which a deed is given. *Kincaid v. Kincaid* (1895), 85 Hun 141, 144, 32 N. Y. Supp. 476, *affd.* (1899), 157 N. Y. 715, 53 N. E. 1126.

It has been held that a party who takes title, the consideration being paid by another, may voluntarily recognize the rights of the party who paid the consideration. *Cassagne v. Marvin* (1888), 16 N. Y. St. Rep. 327, 1 N. Y. Supp. 590.

As to when a title acquired under an agreement to bid in real property for the benefit of another who pays the consideration therefor, is held in trust, see *Smith v. Balcom* (1897), 24 App. Div. 437, 48 N. Y. Supp. 487.

A purchase money mortgage does not come within the provisions of this section. *Abbey v. Taber* (1890), 33 N. Y. St. Rep. 572, 11 N. Y. Supp. 548, *affd.* (1892), 134 N. Y. 615, 32 N. E. 649.

Intention of grantor.—It is a general rule that the question whether a trust results or not must depend upon the intention of the grantor. *Watson v. Le Row* (1849), 6 Barb. 489.

Conveyances taken without the knowledge or consent of the party furnishing the consideration may give rise to a resulting trust. *B., N. Y. & E. R. R. Co. v. Lampson* (1867), 47 Barb. 533, 544; *Bitter v. Jones* (1882), 28 Hun 492; *Stevens v. Union Trust Co.* (1890), 57 Hun 498, 11 N. Y. Supp. 268, 271; *Higgins v. Higgins* (1883), 14 Abb. N. C. 13, 18-n; *Hosford v. Merwin* (1848), 5 Barb. 51, 57.

Where a married woman paid the consideration for the conveyance of land which was, without her knowledge or consent, taken by her brother absolutely in his own name, without the expression of any trust, it was held that a trust resulted for her benefit. *Lounsbury v. Purdy* (1859), 18 N. Y. 515; see also *Brown v. Cherry* (1874), 51 N. Y. 645, *revg.* (1871), 59 Barb. 628.

Unless it appears that the person paying the consideration has consented to an unconditional and absolute conveyance of the property to another without any recognition or intimation in respect to his rights, the statute will not protect an attempted fraud; and it is further held that no presumption can be indulged in to support such a defense. *Church of St. Stanislaus v. Berein* (1898), 31 App. Div. 133, 135, 52 N. Y. Supp. 922, *affd.* (1900), 164 N. Y. 606, 58 N. E. 1086; *Schultze v. Mayor* (1886), 103 N. Y. 307, 311, 8 N. E. 528.

Under the provisions of the Revised Statutes, now embodied in this section, a grant of real property for a valuable consideration made to one person, the consideration being paid by another, creates a resulting trust in favor of the payor if the grantee takes an absolute conveyance without the consent or knowledge of the payor, or purchases the property with money belonging to another in violation of some trust. Thus, *it seems*, that a resulting trust may arise where the grantee, acting for persons who are wholly illiterate and who had paid for real estate by installments, had a deed made out in her own name and concealed that fact for some period of time, during which she paid rent for a portion of the premises to the persons who had paid the consideration. *O'Brien v. Gill* (1915), 166 App. Div. 92, 151 N. Y. Supp. 682.

Resulting trusts for the benefit of third persons are not prohibited. Thus, where

a parent purchases land for the benefit of and as an advancement to an infant child, and the conveyance is made to a third person, by deed absolute in form, there is a resulting trust in favor of the infant. *Sieman v. Schurck* (1864), 29 N. Y. 598, affg. *Sieman v. Austin* (1859), 33 Barb. 9; *Gilbert v. Gilbert* (1864), 2 Abb. Ct. App. Dec. 256; *Foot v. Bryant* (1872), 47 N. Y. 544, in which case it is claimed that there is a mistake in the report of *Gilbert v. Gilbert*; see also *Duffy v. Masterson* (1871), 44 N. Y. 557. But there is no resulting trust in favor of the purchaser where he purchases land and at his request the same is deeded to a third person without such person's knowledge, although the purchaser receives and retains the deed. *Everett v. Everett* (1872), 48 N. Y. 218; *Hoar v. Hoar* (1888), 48 Hun 314, 1 N. Y. Supp. 379, affd. (1891), 125 N. Y. 735, 26 N. E. 758.

Purchase by parent in name of child.—Where a father purchases property in the name of his daughter upon her promise to convey it as he might thereafter direct, he paying the purchase price, and having collected all the rents and paid all the taxes, etc., without any protest on the part of his daughter, it was held that the transaction was an agreement fully performed on the father's part, and did not come within this section. *Jeremiah v. Pitcher* (1898), 26 App. Div. 402, 49 N. Y. Supp. 788, affd. (1900), 163 N. Y. 574, 57 N. E. 1113.

The mere fact that a parent buys and pays for land and has the deed thereof made to an infant child does not establish a resulting trust in favor of the father, but it may more properly be regarded as an advancement to the child. In such cases the question is one of intention merely. *Proseus v. McIntyre* (1849), 5 Barb. 424.

Where a father pays the consideration for a house and lot, the deed of which is taken in the name of his daughter, no trust results in favor of the father or of his estate after his death. *Lee v. Timken* (1896), 10 App. Div. 218, 41 N. Y. Supp. 979.

Purchase of land by husband.—Where a husband purchases lands and has the title conveyed to his wife and makes improvements on the property on which they both live, equity will not enforce an alleged oral promise of the wife to reconvey. In such a case no trust results in favor of the husband. *McCartney v. Titworth* (1907), 119 App. Div. 547, 104 N. Y. Supp. 45. As to purchase of land by husband in the name of wife, see *Rush v. Dilks* (1887), 43 Hun 282, 285, affd. (1890), 120 N. Y. 638, 24 N. E. 1096; *McCahill v. McCahill* (1893), 71 Hun 221, 25 N. Y. Supp. 219; s. c. (1895), 11 Misc. 258, 32 N. Y. Supp. 836; *Gould v. Gould* (1899), 51 Hun 9, 3 N. Y. Supp. 608.

The mere fact that a husband with the knowledge and consent of his wife paid the consideration for and procured the title to lands to be taken in his wife's name for the purpose of placing the lands beyond the reach of creditors does not create a resulting trust. *Binkowski v. Moskiewitz* (1911), 144 App. Div. 161, 128 N. Y. Supp. 803.

Suit by a husband after the death of his wife to enforce specific performance against her heirs of an alleged oral contract whereby she, at the plaintiff's request, agreed that if the plaintiff would pay for certain premises and take title thereto in her name she would hold the title in trust for him and would convey the said premises to him at any time, or at his request would convey to a third party and turn the proceeds over to him. Evidence examined, and *held*, insufficient to establish the agreement alleged. The fact that a husband furnishes the purchase money and takes title to certain premises in the name of his wife, unqualified and unexplained, in law creates a gift to her. Under this section of the Real Property Law title to the premises passed to the heirs of the plaintiff's wife. *Weigert v. Schlesinger* (1912), 150 App. Div. 765, 135 N. Y. Supp. 335, affd. (1914), 210 N. Y. 573, 104 N. E. 1143.

Where a husband borrows money for the purpose of buying lands and takes the deed in the name of himself and wife, who has also contributed a portion of the purchase price, so that the two become tenants by the entirety, the effect of this section, declaring that a grant for a valuable consideration to one person, the consideration being paid by another, is presumed to be fraudulent, etc., is not to make the whole conveyance void as to the creditor of the husband who furnished the consideration, but a trust in his favor results only as to the portion of the lands purchased by the money received by the husband. Hence, on the death of the husband the trust should be not enforced by selling the entire land, but only the deceased husband's former interest therein. Where the deceased grantee left no unpaid creditors save the person who furnished the consideration, he may sue individually to enforce the trust, and it is not necessary that he sue as administrator of the deceased grantee. The Statute of Limitations on the action to enforce said trust does not expire until six years after the discovery of the fraud. *Callegari v. Sartori* (1916), 174 App. Div. 102, 160 N. Y. Supp. 931.

Dower.—Where lands are purchased with the moneys of a husband, but not conveyed or agreed to be conveyed to him, his wife cannot claim dower as a creditor under this section. *Phelps v. Phelps* (1894), 143 N. Y. 197, 38 N. E. 280, 25 L. R. A. 625.

Lease for third person.—A trust will not result in favor of a person who furnishes the money with which a lease is procured for a third person. *Denning v. Kane* (1889), 26 N. Y. St. Rep. 972, 7 N. Y. Supp. 704.

The term "consideration" as used in this section means the whole consideration and not a part thereof. Thus, the payment by a wife of a part (in this case one-tenth) of the consideration for the conveyance to the husband does not vest in her any estate in land. It may be, however, that in cases where an aliquot or some other definite part of the consideration has been advanced the parties intending that some specific interest shall vest in the person paying it or in proportion to the sum paid, there might be a resulting trust to that extent. *Schierloh v. Schierloh* (1895), 148 N. Y. 103, 42 N. E. 409. See also *Kline v. McDonnell* (1891), 62 Hun 177, 16 N. Y. Supp. 649.

Payment of consideration.—To establish a trust under this section the consideration must be paid at or before the execution of the conveyance. *Jackson ex dem. Seelye v. Morse* (1819), 16 Johns. 197; *Steere v. Steere* (1820), 5 Johns. Ch. 1; *Botsford v. Burr* (1817), 2 Johns. Ch. 405; *Jackson ex dem. Erwin v. Moore* (1827), 6 Cow. 706, revd. (1829), 4 Wend. 58. The trust results from the original transaction at the time it takes place and at no other time, and it is founded on the actual payment of money and on no other ground. *Niver v. Crane* (1885), 98 N. Y. 40.

A trust will not result where a purchase is made by one party on his own credit and in reliance upon and after reimbursement by another. *Decker v. Decker* (1888), 108 N. Y. 128, 136, 15 N. E. 307.

Bounty money, being exempt from all claims by creditors, no use or employment of it whatever, can raise a resulting trust. *Youmans v. Boomhower* (1874), 3 T. & C. 21.

Fraud.—Section cannot be invoked to cover a fraud. *Robbins v. Robbins* (1882), 89 N. Y. 251; *Gage v. Gage* (1894), 83 Hun 362, 31 N. Y. Supp. 903; *Carr v. Carr* (1873), 52 N. Y. 251; *Smith v. Balcom* (1897), 24 App. Div. 437, 441, 48 N. Y. Supp. 487; *Jeremiah v. Pitcher* (1898), 26 App. Div. 402, 49 N. Y. Supp. 788, *affd.* (1900), 163 N. Y. 574, 57 N. E. 1113; *Levy v. Brush* (1871), 45 N. Y. 589, 596.

An agent who fails to take a conveyance in the name of his principal cannot obtain advantage of his fraudulent act under this section. *Reitz v. Reitz* (1880), 80 N. Y. 538; *Haack v. Weicken* (1889), 118 N. Y. 67, 23 N. E. 133.

Where a grant of land is made to one person the consideration being paid by or on behalf of another, the legal title is in the grantee, notwithstanding the conveyance is made for the purpose of defrauding the creditors of the grantor and upon a parol trust in his favor. And so long as the grantee holds such title the property is subject to the claims of his creditors. *Davis v. Graves* (1859), 29 Barb. 480, 484.

An innocent ward cannot be deprived of his property or defrauded by means of a secret trust. *Manahan v. Holmes* (1908), 58 Misc. 86, 110 N. Y. Supp. 300.

The presumption of fraudulent intent referred to in this section is not conclusive, but simply casts the burden upon the grantee in defense of his title. *Dunlap v. Hawkins* (1874), 59 N. Y. 342; *McCartney v. Bostwick* (1865), 32 N. Y. 53; *Tappan v. Butler* (1860), 20 N. Y. Super. (7 Bosw.) 480, 491. And where the evidence disapproves fraudulent intent the creditor is not entitled to have the conveyance set aside. *Colnon v. Buckley* (1907), 117 App. Div. 742, 102 N. Y. Supp. 912.

Establishment and enforcement of trust.—Such a trust can only be established in an action by a judgment creditor whose execution has been returned unsatisfied. The judgment creditor who first succeeds in obtaining a judgment establishing a trust is entitled to payment from the proceeds of the trust property in preference to other judgment creditors, although their judgments were recovered and executions thereon were returned unsatisfied prior to his. *Mandeville v. Campbell* (1899), 45 App. Div. 512, 61 N. Y. Supp. 443; *Brown v. Chubb* (1892), 135 N. Y. 174, 31 N. E. 1030. See also *Harvey v. McDonnell* (1888), 48 Hun 409, 1 N. Y. Supp. 83, revd. (1889), 113 N. Y. 526, 21 N. E. 695. A creditor in order to bring himself within this section must prove that he was a creditor at the time of the conveyance. *Wright v. Douglass* (1848), 3 Barb. 554, revd. (1849), 2 N. Y. 373. Hence, a complaint in an action by judgment creditors of defendant to impress a trust upon certain real property standing in the name of the defendant's wife and a corporation, which, in effect, alleged that the judgment debtor paid for the property, and with intent to hinder and delay his creditors had title placed in the names of his wife or the corporation, does not state a cause of action under this section, in the absence of an allegation that at the time title was taken the plaintiffs were creditors of the defendant. *Irving National Bank v. Gray* (1916), 174 App. Div. 29, 160 N. Y. Supp. 341.

A receiver in supplementary proceedings cannot maintain an action to enforce a trust created pursuant to this section. *Underwood v. Sutcliffe* (1879), 77 N. Y. 58, revg. (1877), 10 Hun 453. As to the enforcement of such a trust, see also *Wood v. Robinson* (1860), 22 N. Y. 566; *McCartney v. Bostwick* (1865), 32 N. Y. 59.

Constructive trusts are enforced by a court of equity, irrespective of the intention of the parties, only when necessary to prevent fraud or the abuse of positions of trust and confidence. *Fagan v. McDonnell* (1906), 115 App. Div. 89, 100 N. Y. Supp. 641, affd. (1908), 191 N. Y. 515, 84 N. E. 1112.

Where rights of creditors have not intervened, trust may be enforced. *Martin v. Martin* (1848), 1 N. Y. 473.

The provisions of this statute do not give a specific lien upon the property or an equitable right to be enforced by a suit in equity. The commencement of an equitable action and the filing of a *lis pendens* is necessary to constitute a lien. *Ocean Nat'l Bank v. Olcott* (1871), 46 N. Y. 12.

Trusts resulting in favor of creditors under this section are not the subject of sale by the sheriff, under judgments and executions against the persons paying the consideration money. *Brewster v. Power* (1844), 10 Paige 562; *Garfield v. Hatmaker* (1857), 15 N. Y. 475, 485, overruling *Wait v. Day* (1847), 4 Denio 439; *Robertson v. Sayre* (1892), 134 N. Y. 97, 31 N. E. 250. In case land has been sold the judgment creditor may take his *pro rata* share of the proceeds of the sale of the

land, the cost being charged upon the defendant's share. *Kline v. McDonnell* (1891), 62 Hun 177, 16 N. Y. Supp. 649.

When no resulting trust; parol evidence to establish resulting trust.—Where one since deceased paid a portion of the purchase price of lands and directed that the title be taken in the name of a friend who gave a mortgage to secure the balance of the purchase price, and neither the deed nor any other instrument shows that the grantee took as trustee, and contained nothing to indicate that it was intended as other than a conveyance of the premises to the defendant in fee simple absolute, and there was no other evidence tending to show that defendant took title to the premises in trust or bearing upon the question as to the purpose for which title was vested in him, the case is not only lacking in proof of fraud on the part of the defendant in inducing the conveyance to him, but there is no evidence that even the parol agreement was made between the defendant and the plaintiff's testator by which this property was to be held in trust for the latter. Under these circumstances the case falls directly within the provisions of this section, and not within either of the two exceptions therein made; and a residuary legatee of the deceased is not entitled to a decree impressing a trust upon the lands. The provisions of this section have always been given full force and effect by the courts, except in case of fraud or mistake. Where there has been a mistake or fraud, parol evidence may be given to establish the trust, although a conveyance may be absolute, but the evidence must be clear and positive and define the trust, and except in case of mistake or fraud, no trust in land can be established in this way. *Angermiller v. Ewald* (1909), 133 App. Div. 691, 118 N. Y. Supp. 195.

Parties.—Where an alleged fraudulent conveyance was made to a corporation through a stockholder, no title vests in him, although it be claimed that he furnished the only alleged consideration for the conveyance, to wit, a release *pro tanto* of his pretended indebtedness, nor does any other use or trust result in his favor or in favor of any person except his creditors to an extent necessary to satisfy their just demands. Hence he is not a necessary party to an action brought to set aside such conveyance to the corporation as in fraud of his creditors. *City Equity Co. v. Elm Park Realty Co.* (1909), 135 App. Div. 856, 120 N. Y. Supp. 437.

See generally as to application of section. *London v. Epstein* (1910), 138 App. Div. 513, 123 N. Y. Supp. 399; *Poppenhusen v. Poppenhusen* (1910), 68 Misc. 548, 125 N. Y. Supp. 269, *affd.* (1912), 149 App. Div. 307, 133 N. Y. Supp. 887; *McKinley v. Hessen* (1909), 135 App. Div. 833, 120 N. Y. Supp. 257, *revd.* (1911), 202 N. Y. 24, 95 N. E. 32; *Flaum v. Kaiser Bros. Co.* (1910), 66 Misc. 586, 590, 122 N. Y. Supp. 100, *affd.* (1911), 144 App. Div. 897, 129 N. Y. Supp. 1122; *Cooke v. Higgins* (1912), 152 App. Div. 204, 136 N. Y. Supp. 641; *Jackson v. Forrest* (1848), 2 Barb. Ch. 576, 582; *Ostrander v. Livingston* (1848), 3 Barb. Ch. 416, 426; *Ocean Nat'l Bank v. Hodges* (1876), 9 Hun 161; *Ring v. McCoun* (1851), 10 N. Y. 268; *Bork v. Martin* (1980), 132 N. Y. 280, 284, 30 N. E. 584; *O'Connell v. Madden* (1889), 26 N. Y. St. Rep. 251, 7 N. Y. Supp. 338; *Bates v. Lidgerwood Mfg. Co.* (1891), 130 N. Y. 200, 29 N. E. 102; *Nat. Bank of Orange Co. v. Van Steenburgh* (1892), 47 N. Y. St. Rep. 426, 20 N. Y. Supp. 35; *Stebbins v. Morris* (1885), 23 Fed. 360; *Scott v. Mead* (1889), 37 Fed. 865; *Platt v. Mead* (1881), 9 Fed. 91.

For cases not within the provisions of this section, see *Hubbard v. Gilbert* (1881), 25 Hun 596; *Bitter v. Jones* (1882), 28 Hun 492. (In this case it was held that there was an implied trust and that its establishment was not violative of any statute); *Curtin v. Curtin* (1890), 34 N. Y. St. Rep. 956, 11 N. Y. Supp. 938.

§ 95. Bona fide purchasers protected.—An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 75; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 54.

Reference.—Term “purchaser” defined, Real Property Law, § 290.

Bona fide purchaser from grantee; what constitutes.—*Baker v. Bliss* (1868), 39 N. Y. 70.

The expression as to bona fide purchasers in this section is borrowed from the language of courts of equity, and must be interpreted in the sense in which it is there understood; and it is well settled, that a grantee or incumbrancer, who does not advance anything, at the time, takes the interest conveyed, subject to any prior equity attaching to the subject. Thus, an antecedent debt is not a sufficient consideration. *Wood v. Robinson* (1860), 22 N. Y. 564.

§ 96. Purposes for which express trusts may be created.—An express trust may be created for one or more of the following purposes:

1. To sell real property for the benefit of creditors;
2. To sell, mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;
3. To receive the rents and profits of real property, and apply them to the use of any person, during the life of that person, or for any shorter term, subject to the provisions of law relating thereto;
4. To receive the rents and profits of real property, and to accumulate the same for the purposes, and within the limits, prescribed by law.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 76; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 55, as amended by L. 1830, ch. 320, § 10.

Consolidators' note.—After 1830 and prior to 1893 it was well known that the trustee of a charitable use or trust in this state was only the trustee of a power, and the legal title passed to heirs or devisees, subject to the power which overrode the legal estate. The reason for this was, that charitable uses were, after forty-three years of fierce litigation, held to be within the purview of the article of the Revised Statutes relating to uses and trusts, and the section on express trusts did not class charitable uses as express trusts. So they must, where tolerated, be classed as “powers in trust.”

Now that charitable uses are again permitted by L. 1893, ch. 701, repeated in § 113 of this act (which act, the courts also hold, relieves charitable uses from the operation of our rule against perpetuities, except as to the time of vesting in possession) there is no reason why charitable uses and trusts, when to be performed by natural persons, should not be declared to be express trusts, so that the trustee may take and hold the legal title to real property within the limits allowed by law.

These amendments enable the courts to deal with the trustees of charitable uses, without the necessity of making the heirs and devisees of the donor, or a person holding the naked title, parties to a judicial proceeding in which they no longer have any interest.

The reform proposed by this amendment is orderly, but in no way affects legal or equitable rights of any person, and there need be no hesitancy on that score in adopting it.

There is now no real difference between the trustee of an express trust and the trustee of a “power in trust,” except the sometimes inconvenient one in respect of his legal title.

This proposed subdivision would obviate this inconvenience:

“5. To execute and perform such charitable, religious, educational, and benevolent uses and trusts as are authorized by law.”

References.—Trusts of personal property, see *Personal Property Law*, §§ 15, 20-21. When trustee may lease real property and term of lease, *Real Property Law*, § 106. Notice to beneficiary of sale, mortgage or lease of real property, *Id.* § 107.

A trust is a right of property real or personal held by one party for the benefit of another. *Gifford v. Rising* (1889), 51 Hun 1, 5, 3, N. Y. Supp. 392.

Purpose and intention of section.—The evident intention of the statute was the creation of a trust to sell land and receive the proceeds thereof for the benefit of creditors or for the benefit of legatees, or for the purpose of satisfying any charge thereon, to mortgage land and receive the proceeds thereof for the benefit of legatees for the purpose of satisfying any charge thereon, and to lease lands for a given sum which the trustee is to receive for the benefit of legatees, or for the purpose of satisfying any charge on said land, the fee of the land descending. *Cowen v. Rinaldo* (1894), 82 Hun 479, 485, 31 N. Y. Supp. 554, followed in *Hascall v. King* (1900), 162 N. Y. 134, 149, 56 N. E. 515.

This statute has no application to a security by mortgage. *King v. Merchants' Exchange Co.* (1851), 5 N. Y. 547, 557; *Royer Wheel Co. v. Fielding* (1886), 101 N. Y. 504, 5 N. E. 431.

Trust for charitable purposes; fifth express trust.—A radical modification of the law of charitable gifts was effected by this section. Although this section provides for only four express trusts, since the enactment of section 113, post (L. 1893, ch. 701), a trust for religious, educational, charitable or benevolent uses has been referred to as the fifth express trust authorized by law. *Decker v. Vreeland* (1917), 220 N. Y. 326, 334, 115 N. E. 989, revg. (1915), 170 App. Div. 234, 156 N. Y. Supp. 442.

Trusts of personal property are not fettered by the limitations prescribed for trusts of real estate. They may be created for any purpose not unlawful, subject only to the law of perpetuity. *Cochrane v. Schell* (1894), 140 N. Y. 516, 534, 35 N. E. 971; *Matter of Wilkin* (1905), 183 N. Y. 104, 75 N. E. 1105.

"There are four essential elements of a valid trust of personal property: (1) A designated beneficiary; (2) a designated trustee, who must not be the beneficiary; (3) a fund or other property sufficiently designated or identified to enable the title thereto to pass to the trustee, and (4) the actual delivery of the fund or other property, or of a legal assignment thereof to the trustee, with the intention of passing legal title thereto to him as trustee." *Brown v. Spohr* (1904), 180 N. Y. 201, 209, 73 N. E. 14; *Hammerstein v. Equitable Trust Co.* (1913), 156 App. Div. 644, 141 N. Y. Supp. 1065, affd. (1913), 209 N. Y. 429, 103 N. E. 706.

A trust for the partition of lands is not authorized by this section, but such a purpose may be accomplished by a power. *Cooke v. Platt* (1885), 98 N. Y. 35.

The essential elements of every express trust are a trustee, an estate devised to him, and a beneficiary. The trustee and the beneficiary must be distinct personalities. *Greene v. Greene* (1891), 125 N. Y. 506, 510, 26 N. E. 739.

Among the four essential elements of a valid trust of personal property are a designated beneficiary and actual delivery of the fund or property or legal assignment thereof to the trustee with the intention of passing legal title thereof to the trustee. *Title Guarantee & Trust Co. v. Haven* (1915), 214 N. Y. 468, 108 N. E. 819.

Every trust has three separate elements intertwined closely, but capable of independent consideration and treatment. These are the trust property, the trust objects and the trust term. The first element relates to the property subjected to the trust, the second to those for whose benefit it may be created, and the third to the time during which it may continue. *Kahn v. Tierney* (1909), 135 App. Div. 897, 120 N. Y. Supp. 663, affd. (1911), 201 N. Y. 516, 94 N. E. 1095.

No particular words are necessary to create a trust.—*Steinhardt v. Cunningham* (1891), 130 N. Y. 292, 299, 29 N. E. 100. Thus a trust may be created by an instru-

ment in the form of a power of attorney. *Mersereau v. Bennet* (1908), 124 App. Div. 413, 108 N. Y. Supp. 868.

Particular words, and least of all the specific word "trust," are not necessary to create a trust, but to accomplish that result there must be either an explicit declaration of trust or circumstances which show beyond reasonable doubt that a trust was intended to be created. *Title Guarantee & Trust Co. v. Haven* (1915), 214 N. Y. 468, 108 N. E. 819.

To constitute a valid express trust it is not necessary that the purpose of the trust should be stated in the precise words of the statute nor is it essential that the words "trust" or "trustee" should be used or that there should be a direct devise in terms to the trustee or that the authority to receive the rents and profits should be conferred in express language. It is sufficient if the intention to create the trust under the statute can be fairly collected from the instrument. *Morse v. Morse* (1881), 85 N. Y. 53. See also *Mullins v. Mullins* (1895), 11 Misc. 463, 467, 33 N. Y. Supp. 430; *Donovan v. Van De Mark* (1879), 78 N. Y. 244; *Vernon v. Vernon* (1873), 53 N. Y. 351; *Hubbard v. Housley* (1899), 43 App. Div. 129, 131, 59 N. Y. Supp. 396, *affd.* (1899), 160 N. Y. 688, 55 N. E. 1096; *Purdy v. Wright* (1887), 44 Hun 239. A trust which prescribes no purpose at all for its creation is invalid. *Hagerty v. Hagerty* (1876), 9 Hun 175.

It is a general rule that words sufficient to constitute an express trust authorized by statute should be given that effect, unless it would violate some statutory provision, such as the prohibition against the suspension of absolute ownership, when, if possible, they are held to create a power in trust, in order that the object of the testator may not be wholly defeated. *Close v. Farmers' L. & T. Co.* (1909), 195 N. Y. 92, 99, 87 N. E. 1005, *affg.* (1907), 121 App. Div. 528, 106 N. Y. Supp. 329.

Beneficiaries.—Subdivision 3 of this section contemplates a trust for the maintenance of an infant, a married woman or an improvident person. *Radley v. Kuhn* (1884), 97 N. Y. 27, 32; *Gott v. Cook* (1839), 7 Paige 521, 537, *affd.* (1839), 24 Wend. 641. The rents and profits arising from such trust may be applied to the use of "any person" without regard to his condition, habits, character or mental capacity. *Leggett v. Perkins* (1849), 2 N. Y. 296, 308; *Schenck v. Barnes* (1898), 25 App. Div. 153, 158, 49 N. Y. Supp. 222, *affd.* (1899), 156 N. Y. 316, 50 N. E. 967, 41 L. R. A. 395.

The statute does not validate a shifting use for the benefit, in case of the death of the primary beneficiaries, of persons unknown or not in existence at the creation of the trust. It seems that a trust may permit the sale of real estate and the application of the proceeds to the use of such unborn beneficiaries within the duration of two lives in being. *Gilman v. Reddington* (1861), 24 N. Y. 9.

Validity of trust; determination of.—In determining the question of the validity or invalidity of an express trust, this section alone is to be consulted. *Yates v. Yates* (1850), 9 Barb. 324, 340; *Beckman v. People* (1858), 27 Barb. 260, 272, *affd.* (1861), 23 N. Y. 298.

A failure to name a trustee does not invalidate an express trust if this may be corrected in equity. *McDougall v. Dixon* (1897), 19 App. Div. 420, 46 N. Y. Supp. 280.

A trust by will will not be declared invalid simply because the testatrix has used inapt language. Words have been transposed and supplied, and interpretations given to phrases not accustomed to be applied to them, in order that expression may be given to the designs of a testator. *Mullins v. Mullins* (1894), 79 Hun 421, 424, 29 N. Y. Supp. 961.

A general assignee for the benefit of creditors may be a trustee of an express trust. *Flint v. Bell* (1882), 27 Hun 155, *affd.* (1886), 101 N. Y. 688.

Intention should govern in the construction of an instrument creating a trust.

Peirson v. Van Bergen (1898), 23 Misc. 547, 550, 52 N. Y. Supp. 890. But an intent to create an express trust will not be presumed in the absence of an express declaration to that effect, when the whole purpose of the deed without peril to the rights of any person can be accomplished under a power conferred by the deed. *Heermans v. Robertson* (1876), 64 N. Y. 332, 343.

A trust by implication involves a supposed intention to create one on the part of the testator, but such a trust cannot be established where the will expressly or explicitly negatives any such intention. *Clark v. Clark* (1895), 147 N. Y. 639, 694, 42 N. E. 275.

The trustee takes a fee under subds. 1 and 2 of this section. *Matter of McCaffrey* (1888), 50 Hun 371, 376, 3 N. Y. Supp. 96.

Trust to sell real property for benefit of creditors, see *People ex rel. Short v. Bacon* (1885), 99 N. Y. 275, 279, 2 N. E. 4; *Sedgwick v. Stanton* (1854), 18 Barb. 473, *affd.* (1856), 14 N. Y. 289; *Cooper v. Whitney* (1842), 3 Hill 95, 101. It seems that under subd. 1 the trustee has no power to lease. *Matter of McCaffrey* (1888), 50 Hun 371, 376, 3 N. Y. Supp. 96. For instruments held not to constitute express trust to sell real property, see *Heermans v. Robertson* (1876), 64 N. Y. 332.

A trust to sell lands, and divide the proceeds among the *cestuis que trustent* as beneficiary owners, and not as creditors, is void as a trust, but is valid as a power in trust. *Selden v. Vermilya* (1847), 1 Barb. 58.

Creditors must be existing creditors. *Rome Exchange Bank v. Eames* (1864), 4 Abb. Ct. App. Dec. 83. It seems that the statute authorizes trusts for the benefit of only part of a debtor's creditors. *Bishop v. Halsey* (1856), 3 Abb. Pr. 400, 403. A trust by a solvent debtor to sell real property for the benefit of a portion of the debtor's creditors is not fraudulent as to the others, because of a provision therein that the surplus, if any, should be returned to the grantor. *Knapp v. McGowan* (1884), 96 N. Y. 75; *Rome Exchange Bank v. Eames* (1864), 4 Abb. Ct. App. Dec. 83.

A power of sale must be absolute and imperative, without discretion, except as to the time and manner of performing the duty imposed. The sale or other disposition mentioned in the statute must be the direct and express purpose of the trust. *Steinhardt v. Cunningham* (1891), 130 N. Y. 292, 300, 29 N. E. 100; *Cooke v. Platt* (1885), 98 N. Y. 35, 38; *Chamberlain v. Taylor* (1887), 105 N. Y. 185, 11 N. E. 625. The creation of a trust to sell lands for the benefit of creditors requires that the duty of the grantee to sell be imperative. *Woerz v. Rademacher* (1890), 120 N. Y. 62, 66, 23 N. E. 1113.

A valid trust cannot be created under subds. 1 or 2 unless the direction be absolute and imperative so as to convert the realty into personalty. *Palmer v. Marshall* (1894), 81 Hun 15, 30 N. Y. Supp. 567.

Trust to sell, mortgage or lease real property for payment of debts, legacies, etc.—This provision is qualified by the following section. *Steinhardt v. Cunningham* (1891), 130 N. Y. 292, 299, 29 N. E. 100.

A trust to sell and convert real estate into money and pay over and distribute the proceeds is a valid express trust to sell land for the benefit of legatees under the above section. Where the direction to sell real estate is imperative, no discretion being left in the trustees, except as to the time of sale, the trust created is to be considered as one of personal property. *Russell v. Hilton* (1903), 80 App. Div. 178, 80 N. Y. Supp. 563, *affd.* (1903), 175 N. Y. 525, 67 N. E. 1089.

A trust empowering an executor to convert certain lands into money and to divide it among certain legatees is valid, for the authority given to the executors to take possession of the land confers upon them a right to the rents and profits. *Hubbard v. Housley* (1899), 43 App. Div. 129, 131, 59 N. Y. Supp. 392, *affd.* (1899), 160 N. Y. 688, 55 N. E. 1096. Executors being authorized by will to sell lands for

the purpose of paying debts and legacies, may, in this respect, be regarded as trustees of an express trust. *Wood v. Brown* (1866), 34 N. Y. 337, 340.

A trust cannot be created to sell, mortgage or lease land in order to pay creditors. *Cassagne v. Marvin* (1888), 16 N. Y. St. Rep. 327, 1 N. Y. Supp. 590, 593; *Rogers v. De Forest* (1838), 7 Paige 272, 275.

A trust to mortgage real estate is invalid where it is not for the benefit of legatees, or for the purpose of satisfying a charge upon the land. *Weeks v. Cornwell* (1887), 104 N. Y. 325, 338, 10 N. E. 431. The sale may be for the benefit of a sole legatee. *Skinner v. Quin* (1870), 43 N. Y. 99, 106. The power of leasing and collecting rents, necessarily includes the power of putting in and putting out the tenants. *Tucker v. Tucker* (1851), 5 N. Y. 408, 515. As to the validity of a trust to lease lands for the purpose of discharging liens thereon, see *Hascall v. King* (1900), 162 N. Y. 132, 149, 56 N. E. 515, modif. (1898), 28 App. Div. 280, 51 N. Y. Supp. 73. Valid trusts to sell, mortgage or lease real property, see *Kelly v. Hoey* (1898), 35 App. Div. 273, 55 N. Y. Supp. 94; *Corse v. Leggett* (1857), 25 Barb. 389, 395, being a trust to sell lands for the purpose of satisfying a charge thereon. Valid trusts for benefit of legatees, see *Stewart v. Hamilton* (1885), 37 Hun 19; *Savage v. Burnham* (1858), 17 N. Y. 561; *Garvey v. McDevitt* (1878), 72 N. Y. 556; *Deegan v. Von Glahan* (1894), 75 Hun 39, 26 N. Y. Supp. 989, affd. (1895), 144 N. Y. 573, 39 N. E. 692. For benefit of annuitants or legatees. *Buchanan v. Little* (1896), 6 App. Div. 527, 39 N. Y. Supp. 671, modf. 154 N. Y. 147, 47 N. E. 970.

When no trust created; absolute gift subject to life estate and power of sale.—Where a testator bequeathed his residuary estate “absolutely,” to a daughter and such other children as should be born to him, subject, however, to the right of his wife to enjoy for life the income from half of said estate, and appointed certain persons executors and guardians of the estates of his children, no trust was created although the will empowered the executors to sell the lands during the minority of any child, and further provided that the “executors and trustees” could sell the lands upon the expiration of said “trust term,” and partition and divide the estate among persons entitled thereto, with additional power “during the said trust term,” to invest and reinvest the “trust fund,” etc. *Hamilton v. Hamilton* (1909), 135 App. Div. 454, 119 N. Y. Supp. 986, revg. (1909), 63 Misc. 533, 118 N. Y. Supp. 588.

A trust for various “annuitants” not lawful by statute will be regarded as separable if such intention is indicated by the will. *Matter of United States Trust Co.* (1914), 86 Misc. 603, 148 N. Y. Supp. 762, affd. (1915), 168 App. Div. 903, 152 N. Y. Supp. 1147.

A bequest of a sum to buy an annuity gives an election to take the money as a capital sum, and the legatee may insist that no annuity shall be bought, especially where she is past middle life and an investment against her wish and obvious interest in an annuity for her own life would have aleatory elements in which the probabilities might be all against her. *Matter of Cole* (1916), 174 App. Div. 534, 161 N. Y. Supp. 120, affd. (1916), 219 N. Y. 435, 114 N. E. 785.

Annuity and dower; priority.—*Clark v. Clark* (1895), 147 N. Y. 639, 42 N. E. 275.

A trust to receive rents and profits and pay them over to the beneficiary is valid and essentially an active trust. *Leggett v. Perkins* (1849), 2 N. Y. 296, 306; *Moore v. Hegeman* (1870), 72 N. Y. 376, 384; *Tucker v. Tucker* (1851), 5 N. Y. 408, 416.

A trust deed, requiring the trustee to pay the net rents and profits of lands to beneficiaries monthly is a valid trust as a fair construction of such deed clothes the trustee with power to collect. *Ogilby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860, affd. (1911), 202 N. Y. 614, 96 N. E. 1123.

It is not only necessary that the trustee should receive the rents and profits, but he is also required to make the application. *Jarvis v. Babcock* (1849), 5 Barb.

139, 144; *Hawley v. James* (1836), 16 Wend. 64, note. In order to receive the rents and profits, the trustee must be entitled to the possession and to control and manage the property. *Salsbury v. Parson* (1885), 36 Hun 12, 14.

In order to constitute a valid trust under the third subdivision of this section, there must be a direction to apply the rents and profits to some person for a certain period. *Cooke v. Platt* (1888), 98 N. Y. 35, 39. And there must also be a purpose, real and substantial. *Cochrane v. Schell* (1894), 140 N. Y. 516, 535, 35 N. E. 971. A devise in trust to receive rents, issues and profits, where there is no direction to apply to the use of any person for any period, and a power to sell property, which is not authorized for the benefit of creditors, or of legatees, or to satisfy a charge upon the same, cannot be deemed to be among the express trusts enumerated in this section. *Holly v. Hirsch* (1892), 136 N. Y. 590, 594, 32 N. E. 709.

It seems that a trust to manage, control and direct, is a trust to receive the rents and profits. *Dillaye v. Greenough* (1871), 45 N. Y. 438, 444. Thus, the authority to lease, rent, repair, insure, pay taxes, assessments and interest and pay net income to devisees creates a valid trust. *Tobias v. Ketchum* (1865), 32 N. Y. 319, 330.

A power to lease may carry with it the power to receive the rents. *Morse v. Morse* (1881), 85 N. Y. 53. It has been held that the power given to executors to collect rents and manage generally the real estate does not carry with it by implication the power to lease within the meaning of this section. *Cowen v. Rinaldo* (1894), 82 Hun 479, 484, 31 N. Y. Supp. 554, following *Hawley v. James* (1836), 16 Wend. 61. But see *Becker v. Becker* (1897), 13 App. Div. 342, 347, 43 N. Y. Supp. 17.

Terms "applied" and "paid over" are equivalent.—A trust providing for a partial accumulation during the minority of certain children and directing that certain sums of money "shall be applied" to the education and support of said children during the period named, and after that period providing that the whole of the income shall "be paid over" to them, is within the statute. The words "applied" and "paid over" as used are substantial equivalents. *Moore v. Hegeman* (1870), 72 N. Y. 376, 384. A trust "to pay over" is now equivalent to a trust "to apply to the use of." *Fellows v. Heermans* (1870), 4 Lans. 230, 235; *Leggett v. Hunter* (1859), 19 N. Y. 445, 454; *Marx v. McGlynn* (1882), 88 N. Y. 357, 376.

Duration of trust.—Where a testator gave his real estate to his executors for the benefit, education, maintenance and support of his children and the livelihood of his wife and empowered his executors to sell it, requesting and enjoining them to invest the proceeds until his two youngest children attained the age of twenty-one years, the interest to be used for the maintenance and education of his children and the support of his wife, if a valid trust was created, it terminated when the youngest child became twenty-one years of age. In other words the only fixed period for the duration of the trust is when the youngest child shall attain full age; and under the statute an essential element of an express trust is that it shall be for a fixed period. *Jessup v. Witherbee Real Estate & Imp. Co.* (1909), 63 Misc. 649, 117 N. Y. Supp. 276.

Trust need not be measured by life of beneficiary.—A trust for the receipt and application of rents and income need not be measured by the life of the beneficiary, but may be for the life of any designated person in being. *Stringer v. Young* (1908), 191 N. Y. 157, 83 N. E. 690, disapproving *Downing v. Marshall* (1861), 23 N. Y. 366, 377. The estate of the trustee must terminate, however, with the life of the *cestui que trust*. *Matter of McCaffrey* (1888), 50 Hun 371, 376, 3 N. Y. Supp. 96.

It is not necessary that all of the beneficiaries of the trust or even that any

of them should be identical with those whose lives measure the duration of the trust term. These lives may be those of persons who are total strangers to the trust objects. *Kahn v. Tierney* (1909), 135 App. Div. 897, 120 N. Y. Supp. 663, *affd.* (1911), 201 N. Y. 516, 94 N. E. 1095.

Valid trusts to receive rents and profits; illustrations.—A power to receive the rents and profits for some of the purposes mentioned in the statute is requisite to constitute a valid trust. *Purdy v. Wright* (1887), 44 Hun 239.

A deed "in trust to collect the rents, income and profits of the said real estate, and, after the expenses for care and maintenance of the same are paid, to pay over the balance of said income to the said H. E. Roberts, during her natural life," is a valid trust. *Roberts v. Cary* (1895), 84 Hun 328, 332, 32 N. Y. Supp. 563.

A trust authorizing the trustee to control, manage and dispose of the trust estate and the income thereof, and to pay over the same to a married woman for her support and maintenance, is substantially a trust to receive the rents and profits and apply the same to her use within the terms of the statute. *Campbell v. Low* (1850), 9 Barb. 585.

A will giving the residue of the testator's estate to his executors or the survivors of them in trust to collect the rents and income and apply a certain portion thereof to the support and maintenance of one of his daughters, and on the death of his said daughter to sell such real and personal estate and to divide the proceeds among such designated beneficiaries creates two valid trusts. *Horsfield v. Black* (1899), 40 App. Div. 264, 57 N. Y. Supp. 1006.

A will directing the executors of the testator, in case at the time of the testator's death any of the children or issue of a deceased child shall be minors, to "hold and invest the share of each such minor or minors, and to receive and collect the interest and income arising therefrom, and to apply the same toward his, her, or their education and support until each respectively reach the age of twenty-one years," creates an express trust for the use of the minors. *Robinson v. Adams* (1903), 81 App. Div. 20, 80 N. Y. Supp. 1098, *affd.* (1904), 179 N. Y. 558, 71 N. E. 1139.

The testator left his estate in trust for his wife, unmarried daughters and minor children, until two of the minor children became of age, with a power of sale in the trustee; held, an express trust was created; the real estate, on which the power was not exercised, was vested in the remaindermen at the testator's death; the power to sell did not enlarge the trustee's estate, the exercise of the power being discretionary and not imperative. *In re L'Hommedieu* (1905), 138 Fed. 606.

Trust to apply the rents and profits for the use of a spendthrift son. *Young v. Young* (1908), 127 App. Div. 130, 111 N. Y. 341.

For other examples of valid trusts to receive the rents and profits, see *Townshend v. Frommer* (1894), 125 N. Y. 446, 454, 26 N. E. 805; *Maitland v. Baldwin* (1893), 70 Hun 276, 24 N. Y. Supp. 29; *Genet v. Hunt* (1889), 113 N. Y. 158, 168, 21 N. E. 91; *Haxtun v. Corse* (1848), 2 Barb. Ch. 506, 517; *Pierson v. Van Bergen* (1898), 23 Misc. 548, 52 N. Y. Supp. 890; *Nicoll v. Walworth* (1847), 4 Den. 385, 388; *Boynnton v. Hoyt* (1845), 1 Den. 53; *Belmont v. O'Brien* (1855), 12 N. Y. 394, 400; *Priessenger v. Sharp* (1891), 59 N. Y. Super. (27 J. & S.) 315, 14 N. Y. Supp. 372, 375; *McArthur v. Gordon* (1889), 51 Hun 511, 4 N. Y. Supp. 584, *modf.* (1891), 126 N. Y. 597, 27 N. E. 1033; *Richards v. Crocker* (1892), 49 N. Y. St. Rep. 242, 20 N. Y. Supp. 954, 956, *affd.* (1894), 60 N. Y. St. Rep. 875; *Matter of Livingston* (1866), 34 N. Y. 555, 568; *Lahey v. Kortright* (1892), 132 N. Y. 450, 455, 30 N. E. 989; *Culross v. Gibbons* (1892), 130 N. Y. 447, 29 N. E. 839; *Marvin v. Smith* (1871), 46 N. Y. 571, 576; *Irving v. Campbell* (1888), 56 N. Y. Super. (24 J. & S.) 24 N. E. 821, 8 L. R. A. 620, 224, 232, *revd.* (1890), 121 N. Y. 353; *Du Bois v. Barker* (1875), 4 Hun 80, 6 T.

& C. 349, 351; McLean v. McLean (1892), 50 N. Y. St. Rep. 509, 21 N. Y. Supp. 326; Doscher v. Wyckoff (1909), 132 App. Div. 139, 116 N. Y. Supp. 389, affg. (1909), 63 Misc. 414, 113 N. Y. Supp. 655; Shuler v. Shuler (1910), 137 App. Div. 515, 121 N. Y. Supp. 869, revg. (1909), 63 Misc. 604, 118 N. Y. Supp. 629; Tredwell v. Tredwell (1914), 86 Misc. 104, 148 N. Y. Supp. 391.

Direction to sell property and divide proceeds.—A conveyance to a person in trust to apply the income to the use of the beneficiary during her life and thereafter to the use of her daughter during her life, and upon the death of both to sell the same and divide the proceeds equally among persons named, share and share alike, creates an express trust within the meaning of subd. 3 of this section. The direction to sell and distribute was merely a power in trust, and the land upon the termination of the life estates descended to the remaindermen subject to the execution of the power. *Train v. Davis* (1906), 49 Misc. 162, 98 N. Y. Supp. 816, affd. (1906), 116 App. Div. 917, 101 N. Y. Supp. 1147.

A naked trust to sell and divide lands cannot be created. *Matter of Murray* (1908), 124 App. Div. 548, 551, 108 N. Y. Supp. 1047.

Trust to pay annuities out of the rents and profits of land, may be created under subdivision three. *Cochrane v. Schell* (1894), 140 N. Y. 516, 534, 35 N. E. 971, distinguishing *Hawley v. James* (1836), 16 Wend. 61, and limiting *Lang v. Ropke* (1852), 7 N. Y. Super. (5 Sandf.) 363; *Griffen v. Ford* (1857), 14 N. Y. Super. (1 Bosw.) 123.

Unauthorized trust.—See *Kondolf v. Britton* (1914), 160 App. Div. 381, 145 N. Y. Supp. 791.

A trust to receive the rents and profits of lands to pay debts is void; for the statute only authorizes a trust to sell lands for the benefit of creditors. *Hawley v. James* (1836), 16 Wend. 61, 64.

When power to sell not for benefit of creditors or legatees.—A conveyance by several owners of real property to one of their number with the intention to vest in him as trustee title thereto and sole authority to manage the same for them for the period of ten years, to sell at his discretion, to collect rents and profits and to improve the property, does not create a valid trust, the power to sell not being made for the benefit of creditors or legatees or for the purpose of satisfying a charge upon the lands. The attempted trust also suspends the power of alienation, for the exercise of the power of sale would not *ipso facto* terminate the trust. *Stanley v. Payne* (1909), 65 Misc. 77, 119 N. Y. Supp. 570.

A devise to an executor in trust, which does not authorize him to collect the rents and profits but gives to the life beneficiary the same right to occupy the lands devised that he would enjoy if he possessed the legal estate, is not a valid trust under the statute, but the title to the lands devised vests in the beneficiaries. *Matter of England* (1910), 69 Misc. 523, 127 N. Y. Supp. 881.

An unsuccessful attempt to create an express trust for a purpose specified in this section may create a power in trust. *Stanley v. Payne* (1909), 65 Misc. 77, 119 N. Y. Supp. 570; *Kondolf v. Britton* (1914), 160 App. Div. 381, 145 N. Y. Supp. 791. See also cases cited under section 99, *post*.

Application of rents and profits to payment of mortgage.—A trust empowering the trustee to take rents and profits of land and apply them during the lifetime of an annuitant to the payment of mortgages is invalid, for it would decrease the burden upon the trust estate, and thereby increase the capital thereof in violation of the provisions which prohibit the accumulation of rents and profits, except during the minority and for the sole benefit of minors. *Hascall v. King* (1900), 162 N. Y. 134, 149, 56 N. E. 515, modfg. (1898), 28 App. Div. 280, 51 N. Y. 73. See *Becker v. Becker* (1897), 13 App. Div. 342, 347, 43 N. Y. Supp. 17; *Cowen v. Rinaldo* (1894), 8 Misc. 115, 28 N. Y. Supp. 369, revd. (1894), 82 Hun 479, 31 N. Y. Supp. 554; *Matter of Fisher* (1893), 4 Misc. 46, 25 N. Y. Supp. 79.

Trust to accumulate rents and profits may be implied where from the whole will it is apparent that the testator intended that the trustee should be empowered to receive the rents and profits and for that purpose and to accomplish the other objects of the will it appears to be convenient and advantageous that they should be vested with the legal authority. *Steinhardt v. Cunningham* (1891), 130 N. Y. 292, 299, 29 N. E. 100.

An accumulation for the payment of debts, incumbrances of the estate and then for the benefit of the children and the issue of any that might be dead until all the grandchildren should arrive at age is invalid, as not being within the provisions of the statute. *Bean v. Hockman* (1859), 31 Barb. 78, 82.

Accumulation for benefit of adults and minors.—A trust for the accumulation of rents and profits of real estate for the benefit of adults as well as minors is void. *Hawley v. James* (1836), 16 Wend. 61, 64-n. Thus, a trust to accumulate rents and profits for the benefit of the testator's wife and minor children is void. *Boynton v. Hoyt* (1845), 1 Den. 53.

Suspension of power of alienation.—The mere creation of a trust does not *ipso facto* suspend the power of alienation. It is only suspended by such a trust where a trust term is created, either expressly or by implication, during the existence of which a sale by the trustee would be in contravention of the trust. *Robert v. Corning* (1882), 89 N. Y. 225, 236.

In determining whether a trust violates the statutes limiting the suspension of power of alienation, only the duration of the trust term should be considered, not the nature of the trust property or the objects of the trust. A trust may be created for a definite period, if coupled with a proviso that it shall determine on the death of persons in being at the time of the creation of the trust as permitted by the statutes forbidding perpetuities. *Kahn v. Tierney* (1909), 135 App. Div. 897, 120 N. Y. Supp. 663, *affd.* (1911), 20 N. Y. 516, 94 N. E. 1095.

A trust to receive and apply the rents and profits of lands is not invalidated by reason of the fact that during the period of suspension more than two persons are to enjoy the benefit of the income. *Crooke v. County of Kings* (1884), 97 N. Y. 421.

A devise to trustees to receive and apply the rents and profits during a minority is not an absolute term of years corresponding with the possible duration of the minority, but is determined by the death of the minor before he attains his age. This construction of such a limitation was adopted both by the chancellor and the court of errors in *Hawley v. James* (1835), 5 Paige 463, *affd.* (1836), 16 Wend. 60, and although it is not to be reconciled with the English decisions, it must now be considered as the settled law of this state. *Lang v. Ropke* (1852), 7 N. Y. Super. (5 Sandf.) 363, 369.

Trusts unlawfully suspending the power of alienation are invalid. See *Jennings v. Jennings* (1852), 7 N. Y. 547, 548; *Hobson v. Hale* (1884), 95 N. Y. 611; *Rice v. Barrett* (1886), 102 N. Y. 161, 164, 6 N. E. 898; *Greene v. Greene* (1891), 125 N. Y. 506, 26 N. E. 739; *Underwood v. Curtis* (1891), 127 N. Y. 523, 541, 28 N. E. 585; *Benedict v. Webb* (1885), 98 N. Y. 460; *Hooker v. Hooker* (1899), 41 App. Div. 235, 58 N. Y. Supp. 536, *revd.* (1901), 166 N. Y. 156, 59 N. E. 769; *Tucker v. Tucker* (1848), 5 Barb. 99, 101, *affd.* (1851), 5 N. Y. 408; *Buchanan v. Little* (1896), 6 App. Div. 527, 39 N. Y. Supp. 671, *modf.* (1897), 154 N. Y. 147; *Stanley v. Payne* (1909), 65 Misc. 77, 119 N. Y. Supp. 570; *Nester v. Nester* (1910), 68 Misc. 207, 118 N. Y. Supp. 1009, 124 N. Y. Supp. 974; *Washburn v. Acome* (1911), 74 Misc. 301, 131 N. Y. Supp. 963, *affd.* (1912), 151 App. Div. 948, 136 N. Y. Supp. 1150, 47 N. E. 970. See also cases cited under § 42, ante, and under § 11 of the Personal Property Law.

§ 97. Certain devises to be deemed powers.—A devise of real property

to an executor or other trustee, for the purpose of sale or mortgage, where the trustee is not also empowered to receive the rents and profits, shall not vest any estate in him; but the trust shall be valid as a power, and the real property shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 77; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 56.

References.—As to powers, their objects and effects and principles applicable thereto, see Article V, *post*. General and special powers in trust, §§ 137, 138, *post*. Duties of executor under power of sale, Decedent Estates Law, § 110.

The terms "heirs or devisees" as used in this section do not include the children of a life tenant. *Lydon v. Met. Elevated Railway Co.* (1894), 7 Misc. 25, 27 N. Y. Supp. 311.

Power to lease.—It should be noted that the word "lease" is omitted from this section. *Becker v. Becker* (1897), 13 App. Div. 342, 43 N. Y. Supp. 17.

Devise of power of sale.—See *Kinnear v. Rogers* (1870), 42 N. Y. 531; *Manice v. Manice* (1871), 43 N. Y. 303, 364; *Vernon v. Vernon* (1873), 53 N. Y. 351; *Clift v. Moses* (1889), 116 N. Y. 144, 22 N. E. 393; *Germond v. Jones* (1842), 2 Hill 569; *Palmer v. Marshall* (1894), 81 Hun 15, 30 N. Y. Supp. 567; *Matter of Spears* (1895), 89 Hun 49, 35 N. Y. Supp. 35; *Reynolds v. Denslow* (1894), 80 Hun 359, 30 N. Y. Supp. 77.

Title of executors under power of sale.—Although executors are given discretionary power of sale, they are not vested with the legal title, and the power is not inconsistent with the passing of the estate under a residuary clause. *Matter of Arensberg* (1907), 120 App. Div. 463, 104 N. Y. Supp. 1033. A power in the executors to sell does not give an estate by implication. *Leonard v. Burr* (1858), 18 N. Y. 96, 108.

Title descends to heirs or devisees subject to power.—Where the trustee is not "empowered to receive the rents and profits" no estate vests in him, but passes directly to the heir or devisees subject to the execution of the power. *Matter of Cooney* (1906), 112 App. Div. 659, 98 N. Y. Supp. 676. See also *Sweeney v. Warren* (1891), 127 N. Y. 426, 431, 28 N. E. 413; *Crittenden v. Fairchild* (1869), 41 N. Y. 289; *Chamberlain v. Taylor* (1887), 105 N. Y. 185, 11 N. E. 625; *Konvalinka v. Schlegel* (1887), 104 N. Y. 125, 130, 99 N. E. 868; *Foersch v. Schmitt* (1907), 55 Misc. 608, 106 N. Y. Supp. 935.

Rents and profits; who entitled to.—When by a will a bare power of sale is given to executors, and the lands meanwhile descend to the heir, the latter is at law entitled to the intermediate rents and profits, but if the power of sale operates as an immediate conversion of the land into personalty, accompanied with a gift of the proceeds then in equity, the intermediate rents and profits go with, and are deemed to be a part of, the converted fund, and the heir may be compelled to account therefor to the executor. *Lent v. Howard* (1882), 89 N. Y. 169, 177.

It has been held that the authority, given to executors to take possession of the land, conferred on them, as an incident of that power, a right to the rents and profits of the land. *Hubbard v. Housley* (1899), 43 App. Div. 129, 132, 59 N. Y. Supp. 392, *affd.* (1899), 160 N. Y. 688, 55 N. E. 1096.

Partition.—A power to sell realty is not an absolute legal bar to an action for partition. *Mellen v. Banning* (1893), 72 Hun 176, 25 N. Y. Supp. 542; *Palmer v. Marshall* (1894), 81 Hun 15, 21, 30 N. Y. Supp. 567.

See generally *Fogarty v. Stange* (1911), 72 Misc. 225, 129 N. Y. Supp. 610; *Turco v. Trimboli* (1912), 152 App. Div. 431, 137 N. Y. Supp. 343; *Correll v. Lauterbach* (1896), 12 App. Div. 531, 42 N. Y. Supp. 143, *affd.* (1899), 159 N. Y. 553, 54 N. E. 1089;

L. 1909, ch. 52.

Uses and trusts.

§ 98.

Weeks v. Cornwell (1887), 104 N. Y. 325, 339, 10 N. E. 431; Purdy v. Wright (1887), 44 Hun 239; Matter of Christie (1891), 59 Hun 153, 13 N. Y. Supp. 202; Hoepfner v. Sevestre (1890), 30 N. Y. St. Rep. 296, 10 N. Y. Supp. 51.

§ 98. Surplus income of trust property liable to creditors.*—Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which can not be reached by execution.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 78; originally revised from R. S. pt. 2, ch. 1, tit. 2, § 57.

Consolidators' note.—The Code of Civil Procedure (§ 1391), as conceded, has put an end to a large "spendthrift trust" in this state. See *King v. Irving*, 103 App. Div. 420; *Sloane v. Tiffany*, 103 App. Div. 540. The effect of § 1391 of the Code is to permit certain creditors of beneficiaries of trusts created under the third subdivision of § 76 (§ 96 of present law) of the former Real Property Law, to have execution on their judgments. So important a reform in our domestic law of trusts deserves to be called to the attention of lawyers and laymen reading the statute on Uses and Trusts and such a clause might be added to this section. It ought not to be left obscurely contained in a long section of the Code of Civil Procedure.

Reference.—For provision as to income of trust of personal property, see Personal Property Law, § 15.

The object of this section is to prevent an accumulation of the surplus interest or income not wanted for the support of the *cestui que trust*, where no valid direction for such accumulation has been given. *Clute v. Bool* (1840), 8 Paige 83.

Application generally.—The remedy afforded to creditors under this section is only available to judgment creditors of the beneficiary who have exhausted their remedies at law. A trustee in bankruptcy who is vested with all the estate and property of the bankrupt is not entitled to maintain an action under this section to reach the surplus income of the trust estate. It would seem that the section applies to personal as well as to real property. *Butler v. Baudouine* (1903), 84 App. Div. 215, 82 N. Y. Supp. 773, *affd.* (1903), 177 N. Y. 530, 69 N. E. 1121.

Application to personal property trusts.—The provisions of § 57 of the Revised Statutes, part 2, title 2, from which this section was originally derived, although in terms relating only to real property, has been held to apply actually to personal property. *Dittmar v. Gould* (1901), 60 App. Div. 94, 98, 69 N. Y. Supp. 708.

This provision of the statute is equally applicable to a trust created to receive and pay over the income of personal property. *Williams v. Thorn* (1877), 70 N. Y. 270, 273; *Rider v. Mason* (1846), 7 Sandf. ch. 351, *mod.* (1847), 2 Barb. ch. 79; *Tolles v. Wood* (1885), 99 N. Y. 617, 1 N. E. 251; *Wetmore v. Wetmore* (1896), 149 N. Y. 520, 527, 44 N. E. 169, 33 L. R. A. 708; *Schenck v. Barnes* (1898), 25 App. Div. 153, 159, 49 N. Y. Supp. 222, *affd.* (1898), 156 N. Y. 316, 50 N. E. 967, 41 L. R. A. 395; *Mills v. Husson* (1893), 140 N. Y. 99, 105, 35 N. E. 422.

The provision, making the surplus income of trust property liable to the creditors of the beneficiary though in terms applicable only to real estate, applies equally to trusts of personal property. *Jenks v. Title Guarantee & Trust Co.* (1915), 170 App. Div. 830, 156 N. Y. Supp. 478.

In determining what constitutes a surplus of income, the manner in which the debtor has been accustomed to live is an element. *Bunnell v. Gardner* (1896), 4 App. Div. 321, 38 N. Y. Supp. 569. In *Williams v. Thorn* (1877), 70 N. Y. 270, it was said by Judge Rappalo, with the apparent approval of the entire court, that the

surplus which can be reached by creditors is that which is "beyond what is necessary for the suitable support of the debtor and those dependent upon him, in the manner in which they have been accustomed to live." *Andrews v. Whitney* (1894), 82 Hun 117, 123, 31 N. Y. Supp. 164. Although in *Tolles v. Wood* (1885), 99 N. Y. 616, 1 N. E. 251, where it was said by Chief Judge Ruger that "In the manner in which the party has been accustomed to live, or the style in which his associates and acquaintances expect him to live, furnishes a just criterion for determining the amount necessary to provide a suitable support for the *cestui que trust*," these views do not seem to have been adopted by a majority of the court.

Creditors cannot reach the *cestui que trust* interest unless there is a surplus beyond what is needed for the support of himself and family. *Bramhall v. Ferris* (1856), 14 N. Y. 441; *Hallett v. Thompson* (1836), 5 Paige 583.

The remedy by a creditor is not confined to a surplus which has accrued and accumulated in the hands of the trustees; provision may be made in the judgment determining what will be a reasonable allowance for the *cestui que trust* and directing the application for the payment of the judgment from any future surplus until the same is paid. *Williams v. Thorn* (1877), 70 N. Y. 270.

So much of the rents as shall not be necessary for the support of the beneficiary will be liable to the claims of judgment creditors. *Cruger v. Jones* (1854), 18 Barb. 467, 469.

This section does not authorize a creditor to reach the interest or income of *cestui que trust* in a trust fund which is necessary for his support and maintenance, although such *cestui que trust* is able to and might support himself by his own labor. *Clute v. Bool* (1840), 8 Paige 83.

An annuity or legacy may be reached by creditors in equity and the statement that it is for support does not render it exempt. *Gifford v. Rising* (1889), 51 Hun 1, 5, 3 N. Y. Supp. 392.

Where the annual income of a spendthrift trust is upwards of \$23,000, and the beneficiary, who has been discharged in bankruptcy, has no family depending upon him for support excepting a wife, and it is found that \$9,000 per year will be sufficient for the support of himself and wife, a decree that the balance of the income be paid to the trustee in bankruptcy pursuant to this section is properly rendered. Where the decree in such action reserves to the plaintiff trustee the right to apply at the foot of the judgment, from time to time, for such relief as to the court may seem just and equitable, it should reserve a similar right to the defendant beneficiary in case circumstances arise which make a larger proportion of the income necessary for his support. *Jenks v. Title Guarantee & Trust Co.* (1915), 170 App. Div. 830, 156 N. Y. Supp. 478.

A trustee in bankruptcy is not entitled to the income due from the bankrupt from a trust fund the income of which must be applied to his use and benefit during his life. *McNaboe v. Marks* (1906), 51 Misc. 207, 99 N. Y. Supp. 960. But it has been held that the surplus income of a trust fund, if such surplus is established, is an asset which is liable to the claims of creditors, and passes to the trustee in bankruptcy of the *cestui que trust* under subd. 5 of § 70 of the Bankruptcy Act. *Brown v. Barker* (1902), 68 App. Div. 592, 74 N. Y. Supp. 43. But see *contra* *Butler v. Bandouine* (1903), 84 App. Div. 215, 82 N. Y. Supp. 773, *affd.* (1903), 177 N. Y. 530, 69 N. E. 1121.

A wife having been awarded alimony is a creditor of her husband within the meaning of this section, and after having exhausted her remedy under the code may bring an action in equity to subject the surplus income of a trust in favor of her husband to the payment of her alimony, both past due and to accrue. *Wetmore v. Wetmore* (1896), 149 N. Y. 521, 44 N. E. 169, 33 L. R. A. 708.

An attorney who defends a suit affecting the validity of a trust is not a creditor

of the *cestui que trust* within the meaning of this section. *Noyes v. Blakeman* (1852), 6 N. Y. 567.

A judgment creditor's action to compel the application of the income of a trust fund to the payment of the plaintiff's judgment cannot be maintained under §§ 1871-1879 of the Code of Civil Procedure, although the laws of Rhode Island, where the trust was created, permits the income of a trust fund to be applied to the payment of the claims of creditors. The only remedy in this state in such a case is by an action under the above section to have the surplus income over and above the amount necessary for the support of the beneficiary applied to the payment of the judgment. *Keeney v. Morse* (1902), 71 App. Div. 104, 75 N. Y. Supp. 728.

Action against bankrupt to reach alleged surplus of income. In *re Buchanan* (1914), 219 Fed. 492.

Complaint.—In a suit brought by a creditor to reach the surplus income of the trust fund, the complaint did not allege that the plaintiff had obtained a judgment against the debtor and that an execution had been issued thereon and had been returned unsatisfied; nor did it allege that the trustees of the fund resided in the state of New York, that the trust fund was within the jurisdiction of the court, or that the testator under whose will the trust was created was, at the time of his death, a resident of the state of New York. It did allege, however, that the will was probated in the state of New York, and that the debtor was a non-resident, but it was not shown that the latter could not at any time be found within the jurisdiction of the state of New York so that personal service of a summons might be made upon him and the judgment secured in an action at law. It was held that the complaint was demurrable. *Sherman v. Tucker* (1901), 60 App. Div. 127, 69 N. Y. Supp. 850.

Any surplus of a fund arising from a trust created by a third person for the personal support of a debtor may be reached by a creditor's suit, but in such suit the complaint must show that such surplus exists. *Graff v. Bonnett* (1865), 31 N. Y. 9.

The burden of proof is on the plaintiff to show that there is a surplus of income. *Bunnell v. Gardner* (1896), 4 App. Div. 321, 38 N. Y. Supp. 569.

§ 99. When an authorized trust is valid as a power.—Where an express trust relating to real property is created for any purpose not specified in the preceding sections of this article, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions of this chapter. Where a trust is valid as a power, the real property to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

Source.—Former Real Prop. L. (L. 1897, ch. 547) § 79; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 58, 59.

References.—As to general and special powers in trust, see §§ 137, 138, *post*.

Application.—This section only applies where the instrument attempting to create the trust does not make a disposition of the rents or profits or of the real property to which the trust relates. *Lewis v. Howe* (1901), 64 App. Div. 572, 72 N. Y. Supp. 851, *affd.* (1903), 174 N. Y. 340, 66 N. E. 975, 1101.

In *Holly v. Hirsch* (1892), 135 N. Y. 590, 596, 32 N. E. 709, the court said: "To give effect to this section, we should hold it equally as operative upon the legal title, which has descended to heirs or devisees, as where they have become vested with both the legal and equitable title."

Estate in trust and power in trust; distinction.—*Farmer's L. & T. Co. v. Carroll* (1849), 5 Barb. 613, 652. It seems that a trust and a power in trust in a proper case may exist together where they are not inconsistent. *Belmont v. O'Brien* (1855), 12 N. Y. 394, 404; *Marvin v. Smith* (1870), 56 Barb. 600, 605, *affd.* (1871), 46 N. Y. 571.

Every trust necessarily includes a power.—There is always something to be done to the trust property and the trustee is empowered to do it, and if the trust is invalid because the power to dispose of the property is one that the law does not recognize, it cannot be upheld as a power in trust. *Tilden v. Green* (1891), 130 N. Y. 29, 53, 28 N. E. 880, 14 L. R. A. 33; *Seldon v. Vermilya* (1850), 3 N. Y. 525, 536.

Powers may be created for any lawful purpose by any language which indicates an intention to bestow them and do any act which the grantor might himself lawfully perform. *Reynolds v. Denslow* (1894), 80 Hun 359, 361, 30 N. Y. Supp. 77. The statute makes no attempt to enumerate or define the lawful occasion for creating a power. *Downing v. Marshall* (1861), 23 N. Y. 366, 380.

A power bestowed upon executors to sell property and divide the proceeds into six equal parts and bestow them as directed is valid. *Reynolds v. Denslow* (1894), 80 Hun 359, 362, 30 N. Y. Supp. 77.

It seems that a trust which is merely passive and does not direct or authorize the performance of some act by the trustee may not be validated as a power in trust. *Townshend v. Frommer* (1891), 125 N. Y. 446, 26 N. E. 805.

Trust to appraise and divide shares or to sell or to convey have been held valid as powers in trust under this section. *Gilman v. Reddington* (1861), 24 N. Y. 9, 15; *Crittenden v. Fairchild* (1869), 41 N. Y. 289, 291; see also *Manice v. Manice* (1871), 43 N. Y. 303, 364; *Clark v. Crego* (1867), 47 Barb. 599, *affd.* (1873), 51 N. Y. 646; *Townshend v. Frommer* (1891), 125 N. Y. 446, 459, 26 N. E. 805; *Cooker v. Platt* (1885), 98 N. Y. 35; *White v. Howard* (1868), 52 Barb. 294, 316, *affd.* (1871), 46 N. Y. 144; *Hotchkiss v. Elting* (1861), 36 Barb. 38, 45; *Sayles v. Best* (1893), 140 N. Y. 368, 35 N. E. 636.

Effect of words heirs and assigns forever.—Where an unauthorized trust is attempted to be created the words "heirs and assigns forever" will not carry the fee to the grantee. *Clapp v. Byrnes* (1896), 3 App. Div. 284, 290, 38 N. Y. Supp. 1063, *affd.* (1898), 155 N. Y. 535, 50 N. E. 277. In *Syracuse Savings Bank v. Holden* (1887), 105 N. Y. 415, 11 N. E. 950, it was held that a conveyance to B., his heirs and assigns forever in trust for C. with power to sell or mortgage, vests no title in B., but simply a general power in trust for C.

In order to sustain the validity of a will wherever it is possible the courts construe an authority or duty conferred or imposed upon executors as a mere power in trust, although the duty imposed or the authority conferred may require that the executors shall have control, possession and actual management of the estate. *Robert v. Corning* (1882), 89 N. Y. 236, 238.

Where a trust created by will is invalid as suspending the power of alienation for a longer period than is allowed by law, it cannot be sustained as a power. *Garvey v. McDevitt* (1878), 72 N. Y. 556; *Post v. Hover* (1865), 33 N. Y. 593, 601.

Other cases illustrating powers in trust.—*Tucker v. Tucker* (1851), 5 N. Y. 408, 421; *Downing v. Marshall* (1861), 23 N. Y. 366; *New York Dry Dock Co. v. Stillman* (1864), 30 N. Y. 174; *Heermans v. Robertson* (1876), 64 N. Y. 332; *Heermans v. Burt* (1879), 78 N. Y. 259; *Prentice v. Janssen* (1880), 79 N. Y. 478, 486, power of sale in executors for purpose of distribution; *Steinhardt v. Cunningham* (1891), 130 N. Y. 292, 29 N. E. 100; *Holly v. Hirsch* (1892), 135 N. Y. 590, 32 N. E. 709; *Matter of Spears* (1895), 89 Hun 49, 35 N. Y. Supp. 35; *Smith v. Chase* (1895), 90 Hun 99, 35 N. Y. Supp. 615; *Smith v. Bowen* (1866), 35 N. Y. 83; *Manice v. Manice* (1871), 43 N. Y. 303; *Woerz v. Rademacher* (1890), 120 N. Y. 62, 23 N. E.

1113; *Wainwright v. Low* (1890), 57 Hun 386, 10 N. Y. Supp. 888, *affd.* (1892), 132 N. Y. 313, 30 N. E. 747; *Richardson v. Hunt* (1891), 38 N. Y. St. Rep. 274, 279, 14 N. Y. Supp. 48; *Bliven v. Seymour* (1882), 88 N. Y. 469; *Weeks v. Cornwell* (1887), 104 N. Y. 325, 10 N. E. 431; *Shuler v. Shuler* (1910), 137 App. Div. 515, 121 N. Y. Supp. 869, *revg.* (1909), 63 Misc. 604, 118 N. Y. Supp. 629; *Washburn v. Acome* (1911), 74 Misc. 301, 306, 131 N. Y. Supp. 963, *affd.* (1912), 151 App. Div. 948, 136 N. Y. Supp. 1150.

§ 100. **Trustee of express trust to have whole estate.**—Except as otherwise prescribed in this chapter, an express trust, valid as such in its creation, shall vest in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary shall not take any legal estate or interest in the property, but may enforce the performance of the trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 80; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 60.

Consolidators' note.—Section 100 of this chapter as it now stands misses the entire reform of the Revised Statutes. The intention of this section of the Revised Statutes was to abolish "equitable estates," which in the development of jurisprudence had come to resemble legal estates. Thus, a beneficiary of a trust might have an equitable fee or an equitable estate tail. If an estate tail, it might be barred by equitable tenants in tail. All equitable estates were susceptible of the same limitations as legal estates. The revisers of the Revised Statutes, with a profound knowledge of the old law, intended to abolish this anomaly of "equitable estates" of trust beneficiaries. The revisers of the Real Property Law, with great infelicity, missed the entire point of this reform. As it now stands § 100 is incorrect, for the beneficiary of a trust never does take a legal estate or interest, and its possible effect is to restore the old law relating to equitable estates, if it is construed strictly. The language of the Revised Statutes should, therefore, be restored.

The following is suggested in place of the present section:

"§ 100. **TRUSTEE OF EXPRESS TRUST TO HAVE WHOLE ESTATE.** Every express trust, valid, as such, in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust. The persons for whose benefit the trust is created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity."

Section construed with § 96, subd. 3, ante. In *re L'Hommedieu* (1905), 138 Fed. 606.

Common-law rule.—This section is a declaration of the common-law rule concerning the character of the estate taken by trustees. *Radley v. Kuhn* (1883), 28 Hun 573, *modf.* (1884), 97 N. Y. 26. Personal property in trust vests in the trustee under the rules of the common law. *Gilman v. Reddington* (1861), 24 N. Y. 9, 15.

Estate of trustee.—This section vesting the whole estate in the trustees is by settled construction limited to the trust estate and has no application to remainders and future estates or to powers of sale. *Stevenson v. Lesley* (1877), 70 N. Y. 512, 516; *Losey v. Stanley* (1895), 147 N. Y. 560, 568, 42 N. E. 8; *Matter of Tienken* (1892), 131 N. Y. 391, 401, 30 N. E. 109. See also *Bennett v. Garlock* (1880), 79 N. Y. 302.

It is not intended that the entire absolute fee shall be vested in the trustee, but simply so much of the estate as is put in trust and as is necessary to feed the trust. *Crooke v. County of Kings* (1884), 97 N. Y. 421, 446.

Trustees take no greater title or interest in the estate than that which would be commensurate with the purposes and duration of the trust. *Embury v. Sheldon*

(1877), 68 N. Y. 227, 2 Abb. N. C. 404; *Chism v. Keith* (1874), 1 Hun 589; *Moore v. Appleby* (1885), 36 Hun 368, *affd.* (1888), 108 N. Y. 237, 15 N. E. 377; *Matter of Tompkins* (1898), 154 N. Y. 634, 644, 49 N. E. 135. And cannot charge the trust property, except as authorized by the terms of the trust. *L'Amoureux v. Van Rensselaer* (1845), 1 Barb. Ch. 34, 37.

A devisee to executors in trust makes them trustees of an express trust, although they are not designated as such. *Kelsey v. McTigue* (1916), 171 App. Div. 877, 157 N. Y. Supp. 730.

See, generally, as to estate of trustee, *Ring v. McCoun* (1851), 10 N. Y. 268, 271; *Marvin v. Smith* (1871), 46 N. Y. 571; *People ex rel. Short v. Bacon* (1885), 99 N. Y. 275; *Darling v. Rogers* (1839), 22 Wend. 483; *Garvey v. Union Trust Co.* (1898), 2 N. E. 4, 29 App. Div. 513, 517, 52 N. Y. Supp. 260; *Greer v. Chester* (1891), 62 Hun 329, 17 N. Y. Supp. 230, *affd.* (1892), 131 N. Y. 629, 30 N. E. 863; *McArthur v. Gordon* (1889), 51 Hun 511, 4 N. Y. Supp. 584, *mod.* (1891), 126 N. Y. 597, 27 N. E. 1033; *Corse v. Leggett* (1857), 25 Barb. 389, 395; *Marvin v. Smith* (1870), 56 Barb. 600, 608, *affd.* (1871), 46 N. Y. 571; *White v. Howard* (1868), 52 Barb. 294, 316, *affd.* (1871), 46 N. Y. 144, 168; *Craig v. Hone* (1835), 2 Edw. Ch. 554, 559; *Townshend v. Frommer* (1891), 125 N. Y. 446, 26 N. E. 805; *People v. Stock Brokers Bldg. Co.* (1888), 49 Hun 349, 49 N. Y. St. Rep. 242, 20 N. Y. Supp. 945, *affd.* (1894), 143 N. Y. 631, 37 N. E. 827; *United States v. Leverich* (1881), 9 Fed. 586; *Shindler v. Robinson* (1912), 150 App. Div. 875, 879, 135 N. Y. Supp. 1056.

Rights of trustees and beneficiary.—The trustees take the interest and title of the beneficiary and the possession of the fund or property to enable them to perform the trust; but the beneficiary has a right to have the trust performed and has a standing in equity to enforce it, and the trustees do not take the estates in remainder; this rule is the same both with respect to personal property and with respect to real property. *Newton v. Hunt* (1909), 134 App. Div. 325, 115 N. Y. Supp. 3, *affd.* (1911), 201 N. Y. 599, 95 N. E. 1134.

Breach of trust by trustee; right of beneficiary to follow trust property.—It is a well-settled principle of equity jurisprudence independent of the statute that whenever the trustee has been guilty of a breach of trust and has transferred the property to any third person the *cestui que trust* has a full right to follow such property into the hands of such third person unless he is a bona fide purchaser for value and without notice. *Flint v. Bell* (1882), 27 Hun 155, *affd.* (1886), 101 N. Y. 688.

Defense of validity of trust.—Validity of the trust should be defended by the trustee. *Noyes v. Blakeman* (1852), 6 N. Y. 567, 583.

Enforcement of trust.—The right to enforce the performance of a trust pursuant to this section is a chose in action and personal property. *Schenck v. Barnes* (1898), 156 N. Y. 316, 321, 50 N. E. 967, 41 L. R. A. 395.

See, generally, as to enforcement of trust. *Briggs v. Davis* (1860), 21 N. Y. 574, 577; *Van Cott v. Prentice* (1887), 104 N. Y. 45, 53, 10 N. E. 257, holding that the right of beneficiaries to enforce the trust may be limited by the terms thereof; *White v. Hudson Riv. Ins. Co.* (1852), 7 How. Pr. 341, 349; *Griffen v. Ford* (1857), 14 N. Y. Super. (1 Bosw.) 123, 150; *McArthur v. Gordon* (1891), 35 N. Y. St. Rep. 386, 391, 26 N. E. 459, *mod. on rearg.* (1891), 126 N. Y. 597, 27 N. E. 1033, 12 L. R. A. 667.

§ 101. **Qualification of last section.**—The last section shall not prevent any person, creating a trust, from declaring to whom the real property, to which the trust relates, shall belong, in the event of the failure or termination of the trust, or from granting or devising the property, subject to the execution of the trust. Such a grantee or devisee shall have a legal estate

in the property, as against all persons, except the trustees, and those lawfully claiming under them.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 81; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 61.

Consolidators' note.—The final "him" should be "them" as it was in the original section in the Revised Statutes, 1 R. S., 729, § 61.

Section construed with § 96, subd. 3, ante. In re L'Hommedieu (1905), 138 Fed. 606.

Intent and purpose of section.—This section was undoubtedly intended to prevent a construction of the preceding section by which the grantor might be deemed incapacitated from making a disposition of the lands affected by the trust upon its termination. Townshend v. Frommer (1891), 125 N. Y. 446, 445, 26 N. E. 805.

The temporary estate vested in the trustee does not interfere with or prevent the vesting of remainders or future estates entirely outside of and separate from the trust estate. Craver v. Jermain (1896), 17 Misc. 244, 40 N. Y. Supp. 1056.

Remainder may be disposed of by a beneficiary subject to the trust. Greer v. Chester (1891), 62 Hun 329, 334, 17 N. Y. Supp. 238, affd. (1892), 131 N. Y. 629, 30 N. E. 863.

Life tenant and remainderman; effect of union of interest.—A trust of personal property will not be terminated or extinguished by the union of the interest of the life tenant and the remainderman in one person. Raymond v. Rochester Trust Co. (1894), 75 Hun 239, 241, 27 N. Y. Supp. 1.

See generally.—Lugar v. Lugar (1914), 160 App. Div. 807, 812, 146 N. Y. Supp. 37; McLean v. Freeman (1877), 70 N. Y. 81, 85; Knowlton v. Atkins (1892), 134 N. Y. 313, 317, 31 N. E. 914; Herdman v. N. Y., L. E. & W. R. R. Co. (1891), 42 N. Y. St. Rep. 289, 293, 17 N. Y. Supp. 198, 5 Am. Neg. Cas. 520; Collie v. Jamison (1875), 4 Hun 284, 286; Butler v. Green (1892), 65 Hun 99, 102, 19 N. Y. Supp. 890; Hunter v. Hunter (1860), 31 Barb. 334, 338; Corse v. Leggett (1857), 25 Barb. 389, 395; Hoepfner v. Sevestre (1890), 30 N. Y. St. Rep. 296, 10 N. Y. Supp. 51.

§ 102. Interest remaining in grantor of express trust.—Where an express trust is created, every legal estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to, the person creating the trust or his heirs.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 82; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 62.

Section construed with § 96, subd. 3, ante. In re L'Hommedieu (1905), 138 Fed. 606.

Application.—It seems that this section was intended to cover cases other than those provided by R. S. pt. 2, ch. 1, tit. 2, § 63. Embury v. Sheldon (1877), 68 N. Y. 227, 238.

See, generally, Kittell v. Osborn (1874), 1 Hun 613, 4 T. & C. 45, 48; Garvey v. Union Trust Co. (1898), 29 App. Div. 513, 52 N. Y. Supp. 260; Nearpass v. Newman (1887), 106 N. Y. 47, 53, 12 N. E. 557; Vernon v. Vernon (1873), 53 N. Y. 351, 359; White v. Howard (1871), 46 N. Y. 144, 169; Marvin v. Smith (1870), 56 Barb. 600, 608, affd. (1871), 46 N. Y. 571; Townshend v. Frommer (1891), 125 N. Y. 446, 455, 26 N. E. 805; Lounsbury v. Purdy (1859), 18 N. Y. 515, 518; Briggs v. Davis (1860), 21 N. Y. 574.

§ 103. What trust interest may be alienated.—1. The right of a beneficiary of an express trust to receive rents and profits of real property and apply them to the use of any person, can not be transferred by assignment

or otherwise, but the right and interest of the beneficiary of any other trust in real property may be transferred.

2. The provisions of this section as here amended shall not impair or affect any rights existing on March twenty-fifth, nineteen hundred and three.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 83, as amended by L. 1903, ch. 88; L. 1903, ch. 88, § 2; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 63, as amended by L. 1893, ch. 452.

Consolidators' note.—Section 83 of the former Real Property Law was intended by the late revisers as the equivalent of 1 R. S., 730, § 63. They so state. The old § 63 prohibited the alienation of a beneficiary's interest in any trust for the receipt of the rents and profits of land, thus including the third and fourth express trusts. But the present section confines it to the third trust purpose, thus allowing the transfer of accumulations in a way not permitted by the Revised Statutes. It is true that the beneficiary of the fourth trust is necessarily an infant, but if the interest is assignable it could probably be reached and could be bequeathed by the infant after he reaches the age of eighteen. The result was probably overlooked. In any event the Revised Statutes should be restored, as it is more consonant with the scheme of the articles on Uses and Trusts.

The following is suggested in place of the present section:

"WHAT TRUST INTEREST MAY BE ALIENATED. No person beneficially interested in a trust for the receipt of the rents and profits of lands can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable."

Reference.—When income of trust fund is not alienable, Personal Property Law, § 15.

Application.—This section has no application to a trust created prior to the Revised Statutes. *Dyett v. Central Trust Co.* (1893), 140 N. Y. 54, 65, 35 N. E. 341.

Section is not applicable to the alienation of his interest by a beneficiary of a trust created in another state. *First Nat. Bank v. Nat. Broadway Bank* (1898), 156 N. Y. 459, 51 N. E. 398, 42 L. R. A. 139.

Where the life beneficiary is the settlor of the trust, the prohibition against the alienation by a life beneficiary of rents and issues and profits does not apply; and it follows that it is competent for such settlor of the trust to assign her interest in the income by giving a mortgage thereon. *Newton v. Hunt* (1909), 134 App. Div. 325, 119 N. Y. Supp. 3, *affd.* (1911), 201 N. Y. 599, 95 N. E. 1134.

The effect of this section cannot be defeated by an action of the court permitting such alienation or abrogating the trust. *Lent v. Howard* (1882), 89 N. Y. 169, 182; *Cuthbert v. Chauvet* (1893), 136 N. Y. 326, 32 N. E. 1088, 18 L. R. A. 745. The supreme court cannot render valid a conveyance void under this section. *Douglas v. Cruger* (1880), 80 N. Y. 15, 19.

Inalienability of trust estate.—Trust estates are inalienable by force of statute, although there is nothing in the nature of such an estate which makes them inalienable *ipso facto*. *Hillen v. Iselin* (1895), 144 N. Y. 365, 379, 39 N. E. 368. See also *Farmers' Loan & Trust Co. v. Kip* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092, *affd.* (1908), 192 N. Y. 266, 85 N. E. 59; *Bull v. Odell* (1897), 19 App. Div. 605, 46 N. Y. Supp. 306; *Tucker v. Tucker* (1851), 5 N. Y. 408, 416; *Williams v. Thorn* (1877), 70 N. Y. 270.

The inalienability of the beneficiaries' interest in a trust fund of personal property is the same as if the trust were of real estate. *Campbell v. Foster* (1866), 35 N. Y. 361, 371; *Lent v. Howard* (1882), 89 N. Y. 169, 182.

The disposition of the income from a trust cannot be anticipated by the *cestui que trust* or incumbered by any contract entered into by him providing for its

pledge, transfer or alienation previous to its accumulation. *Tolles v. Wood* (1885), 16 Abb. N. C. 1, 9 (1885), 99 N. Y. 616, 1 N. E. 25.

The *cestui que trust* has no estate or interest in lands or in their future income, upon which she can create a lien or charge, for the expense of protecting the trust estate, or for any other purpose. *Noyes v. Blakeman* (1852), 6 N. Y. 567.

Beneficial interest in the principal of a trust fund may be transferred. *West v. Burke* (1916), 219 N. Y. 7, 16, 113 N. E. 561.

The income payable upon the death of a life beneficiary under a will constituting a trust to the persons entitled to the next eventual estate, pursuant to section 63, *ante*, is not inalienable. *Ransom v. Ransom* (1910), 70 Misc. 30, 127 N. Y. Supp. 1027, *revid.* on other grounds (1911), 147 App. Div. 835, 133 N. Y. Supp. 173.

An annuity is an inalienable trust interest. *McSorley v. Wilson* (1847), 4 Sandf. ch. 515, 524; *Clute v. Bool* (1840), 8 Paige 83; see also *Arthur v. Dalton* (1897), 14 App. Div. 108, 43 N. Y. Supp. 583. And is not a sum in gross within the meaning of this section. *Cochrane v. Schell* (1894), 140 N. Y. 516, 35 N. E. 971.

Assignability of sum in gross.—Where the sole object of the trust is to pay a sum in gross by collecting and accumulating rents, etc., to a specified amount, the *cestui que trust* may release or assign. *Radley v. Kuhn* (1884), 97 N. Y. 27, 32.

Mortgage of trust estate.—Where a will gives the use, income and profits of land to executors in trust for the benefit of infants and upon the termination of the trust devises the land to such infants they take the vested interest in remainder independent of the trust which the court may authorize to be mortgaged. *Craver v. Jermain* (1896), 17 Misc. 244, 40 N. Y. Supp. 1056.

The future income from a trust estate is not assignable by the beneficiary, but the assignment of a vested remainder in the trust estate by a beneficiary is valid. *Stringer v. Barker* (1905), 110 App. Div. 37, 96 N. Y. Supp. 1052, *modf.* (1908), 191 N. Y. 157, 83 N. E. 690.

Where a gift to children of a beneficiary consisted solely in the direction to divide the trust estate upon the death of the beneficiary, the gift to them was contingent and not vested, and an attempt by the children to vest in the beneficiary both the corpus and income of the trust estate was ineffectual. *Matter of Hogarty* (1901), 62 App. Div. 79, 70 N. Y. Supp. 839.

Termination of trust or power by beneficiary.—When the beneficiary under a power is also vested with the title to the real estate as heir or devisee, he may, before the power has been or could be exercised, convey the real estate by warranty deed, and thus defeat or annul the power of sale. *Garvey v. McDewitt* (1878), 72 N. Y. 556, 563. But a beneficiary of a trust for the receipt of rents and profits of real property, entitled to a remainder in the fund subject to his beneficial estate for a life or lives, cannot terminate such trust, unless he is entitled as beneficiary to the whole income thereof. *Cook v. Straiton* (1903), 41 Misc. 206, 83 N. Y. Supp. 964, *affd.* (1904), 96 App. Div. 625, 89 N. Y. Supp. 1102.

When a life beneficiary of the income of property put in trust is given power to dispose of the remainder by will or deed, an appointment of a remainderman by her during her lifetime vests in him a remainder which is absolute, not contingent. And when such appointee conveys the remainder back to the life beneficiary and the latter conveys to herself all the title in such property, the trust is terminated. *Phillips v. Pike* (1907), 121 App. Div. 753, 106 N. Y. Supp. 486.

Merger of trust estate in remainder.—*Brewster v. Brewster* (1846), 4 Sandf. Ch. 22, 29; *Cuthbert v. Chauvet* (1893), 136 N. Y. 326, 329, 32 N. E. 1088, 18 L. R. A. 745; *Oviatt v. Hopkins* (1897), 20 App. Div. 168, 170, 46 N. Y. Supp. 959.

For state of facts where remaindermen take vested alienable interest in testator's estate, see *Stringer v. Young* (1908), 191 N. Y. 157, 83 N. E. 690.

§ 104. Transferee of trust property protected.—Where an express trust

is created, but is not contained or declared in the conveyance to the trustee, the conveyance shall be deemed absolute as to the subsequent creditors of the trustee not having notice of the trust, and as to subsequent purchasers from the trustee, without notice and for a valuable consideration.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 84; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 64.

See *Davis v. Graves* (1859), 29 Barb. 480, 484; *Calkins v. Long* (1855), 22 Barb. 97, 101.

§ 105. When trustee may convey or exchange trust property.—1. If the trust is expressed in the instrument creating the estate, every sale, conveyance or other act of the trustee, in contravention of the trust, except as provided in this section, shall be absolutely void. The supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such trustee to mortgage or sell such real property, or any part thereof, whenever it appears to the satisfaction of the court that said real property, or some portion thereof, has become so unproductive that it is for the best interest of such estate or that it is necessary or for the benefit of the estate to raise funds for the purpose of preserving it by paying off incumbrances or of improving it by erecting buildings or making other improvements, or that for other peculiar reasons, or on account of other peculiar circumstances, it is for the best interest of said estate, and whenever the interest of the trust estate in any real property is an undivided part or share thereof, the same may be sold if it shall appear to the court to be for the best interest of such estate.

2. Whenever, by the provisions of a will, or of a deed of trust, a power of sale is given to one or more executors or trustees, it shall be lawful for any such executor or trustee, subject to the approval of the supreme court, to acquire or exchange lands adjacent to the land or lands subject to such power of sale, as may be deemed desirable for the straightening or improvement of the boundary lines thereof, upon such terms and conditions as may be approved by the supreme court; and the supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such executor or trustee to acquire or exchange lands adjacent to the land or lands subject to such power of sale for the purposes mentioned.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 85, as amended by L. 1897, ch. 136; L. 1898, ch. 311; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 65, as amended by L. 1895, ch. 886.

The object of this section is to protect the beneficiaries from the unauthorized acts of their trustees by charging persons dealing with the latter with knowledge of the trust. *Wood v. Mather* (1862), 38 Barb. 473, 480, *affd.* (1870), 44 N. Y. 249.

Application.—Section applies to personal property. *Genet v. Hunt* (1889), 113 N. Y. 158, 168, 21 N. E. 91.

Notice of authority of trustee.—Persons dealing with a trustee must take notice of the scope of his authority. An act within his authority will bind the trust estate or the beneficiaries as to third persons acting in good faith and without notice, although the trustee intended to defraud the estate, and actually ac-

completed his purpose by means of the act in question. *Kirsch v. Tozler* (1894), 143 N. Y. 390, 395, 38 N. E. 375, affg. (1892), 62 Hun 607, 18 N. Y. Supp. 334.

The grantees of land in trust for creditors reconveyed to the grantor by deed reciting that the trusts had been executed, when in fact there were beneficiaries entitled to a sale and distribution of proceeds. The debtor then mortgaged the land to one having constructive, but not actual, notice of the trust and reconveyance. It was held that the mortgagees took subject to the execution of the trust. *Briggs v. Davis* (1859), 20 N. Y. 15.

When order to sell or mortgage granted.—To justify an order of sale pursuant to this section some necessity must be shown to exist for the use of the money in the preservation or improvement of the property, which the estate is not in a condition to supply, and which can only be supplied by borrowing upon a mortgage or selling a part and using the proceeds. A sale may not be ordered for the purpose of reinvestment and with a view only to increase the income. *Matter of Roe* (1890), 119 N. Y. 509, 23 N. E. 1063.

This section affords no authority to the court to permit a substituted trustee of an express trust in lands created by a will containing no power of sale to sell the lands in order to pay off incumbrances which the remaindermen have voluntarily and for their own purposes imposed upon their shares. *Matter of Mills* (1898), 22 Misc. 629, 50 N. Y. Supp. 966, affd. (1898), 28 App. Div. 258, 50 N. Y. Supp. 995.

Since the amendment of 1897 the actual *necessity* for a sale no longer controls, but a sale of the trust property may be had under authority of the court because it has become unproductive, or because it is necessary or for the benefit of the estate. The amendment of 1897 was an enabling act intended to permit a sale or mortgage which could not be made under the former act. Where it is shown that the property produces an income grossly disproportionate to its value, with no probable prospect of an increase of income, a case of unproductiveness is set forth. The ratio of income to value must always be an important consideration in determining whether or not an estate is, in a legal sense, productive, and the estate may become unproductive either because the income has decreased while the value remained constant, or because the value has increased and the income remained constant. *Webster Realty Co. v. Delano* (1909), 135 App. Div. 488, 120 N. Y. Supp. 440.

It seems that the supreme court cannot authorize the conveyance or release of easements by trustees. *McKee v. N. Y. El. R. R. Co.* (1894), 79 Hun 366, 29 N. Y. Supp. 457. See, generally, *United States Trust Co. v. Roche* (1889), 116 N. Y. 120, 130, 22 N. E. 265; *Goebel v. Iffla* (1888), 111 N. Y. 170, 18 N. E. 649; *Rogers v. Rogers* (1888), 111 N. Y. 228, 18 N. E. 636; *Matter of Clarke* (1891), 59 Hun 557, 14 N. Y. Supp. 431, affd. (1891), 128 N. Y. 658, 29 N. E. 145; *Matter of Morris* (1892), 63 Hun 619, 18 N. Y. Supp. 680, affd. (1892), 133 N. Y. 693, 31 N. E. 627.

Sale of decedent's real property for the payment of his debts held to be unauthorized under this section. *Matter of Easterly* (1911), 202 N. Y. 466, 96 N. E. 122.

What interests included in mortgage by trustee.—Vested interests of infants in remainder which are not included in a trust estate for life cannot be included in a mortgage by the trustee under direction of the court pursuant to this section. *Losely v. Stanley* (1895), 147 N. Y. 560, 42 N. E. 8.

Conveyance by trustee to himself.—This section and § 107 do not authorize a proceeding by a trustee, holding an undivided interest for the benefit of himself and others, to obtain permission to convey to himself individually and as an individual to convey to himself as trustee in order to exercise a power of sale so as to avoid a partition action. *Von Glahn v. Heins* (1908), 128 App. Div. 167, 112 N. Y. Supp. 565.

A purchase of trust property by a trustee is not void *ab origine*, but voidable only at the instance of the *cestui que trust*, or by a party who has acquired the

rights which belong to one in that relation. *Harrington v. Erie County Savings Bank* (1886), 101 N. Y. 257, 264, 4 N. E. 346.

A bona fide purchaser of trust property from a trustee who himself had purchased such property takes the land free from the trust. *Harrington v. Erie County Savings Bank* (1886), 101 N. Y. 257, 264, 4 N. E. 346.

Execution of power of sale.—A power given to an executrix to sell real estate "as she shall deem expedient and for the best interest" of certain named legatees is not well executed by a conveyance to one of the legatees in discharge of a debt owing to the testator. *Russell v. Russell* (1867), 36 N. Y. 581.

A sale of the corpus of the trust estate according to the will of the creator of the trust is not prohibited by this section. *Crooke v. County of Kings* (1884), 97 N. Y. 433, 446; *Belmont v. O'Brien* (1855), 12 N. Y. 394.

When the beneficiary becomes sole trustee for his own benefit, it is improper for such beneficiary to act, except by direction of the court. *Irving v. Irving* (1897), 21 Misc. 743, 47 N. Y. Supp. 1052.

Mechanic's lien against trust estate, see *Lang v. Everling* (1893), 3 Misc. 530, 532, 23 N. Y. Supp. 329.

See generally as to application and effect of section, *Werner v. Wheeler* (1911), 142 App. Div. 358, 364, 127 N. Y. Supp. 158; *Matter of Anderson* (1914), 211 N. Y. 136, 148, 105 N. E. 79; *Radley v. Kuhn* (1883), 28 Hun 573, 578, modf. (1884), 97 N. Y. 26; *White v. Hudson Riv. Ins. Co.* (1852), 7 How. Pr. 341, 349; *Post v. Hover* (1859), 30 Barb. 312, 321, affd. (1865), 33 N. Y. 593; *Briggs v. Palmer* (1855), 20 Barb. 392, 404, mod. (1859), 20 N. Y. 15, mod. on rearg. (1860), 21 N. Y. 574; *Fitzgerald v. Topping* (1872), 48 N. Y. 438, 444; *Anderson v. Mather* (1870), 44 N. Y. 249, 261; *Priessinger v. Sharp* (1891), 59 N. Y. Super. (27 J. & S.) 315, 14 N. Y. Supp. 372.

§ 106. When trustee may lease trust property.—A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The supreme court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewed term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term. If any such trustee has leased any such trust property before June fourth, eighteen hundred and ninety-five, for a longer term than five years, the supreme court, on the application of such trustee, may, by order, confirm such lease, and such order, on the entry thereof, shall be binding on all persons interested in the trust estate.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 86; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 65, as amended by L. 1895, ch. 886.

Power of trustee to lease property.—The trend of judicial opinion seems to establish the doctrine that in the absence of authority so to do, conferred by the instrument constituting the trust, a trustee has no power to lease real estate for a longer period than the actual duration of the trust. *Matter of Armory Board*

(1899), 29 Misc. 174, 179, 60 N. Y. Supp. 882; *Matter of Hoysradt* (1897), 20 Misc. 265, 45 N. Y. Supp. 841; *Graeson v. Keteltas* (1858), 17 N. Y. 491.

Lease of trust property by trustee for given term in violation of this section. See *Cantanno v. Stevenson Co.* (1916), 172 App. Div. 244, 158 N. Y. Supp. 335.

Lease containing option to renew.—A lease executed by a trustee for a term of five years with the option to the lessee to renew such lease for another period of five years, is not void as between the lessee and the trustee with respect to the renewal period, because such lease was not executed after application to the court. This section was intended to extend rather than restrict the powers of a trustee existing at the time of its passage. *Weir v. Barker* (1905), 104 App. Div. 112, 93 N. Y. Supp. 732. But it has been held that trustees have no power to renew leases or to provide for the renewal after the termination of the trust estate by the death of the life beneficiary. *Gomez v. Gomez* (1895), 147 N. Y. 195, 200, 41 N. E. 420; *Matter of McCaffrey* (1888), 50 Hun 371, 374, 3 N. Y. Supp. 96.

Possession of property.—Where tenants have entered into and retained possession of the property leased, they cannot evade the payment of the rent by asserting that the lease under which they occupy was invalid because it was not confirmed by the supreme court as required by this section. *Steuber v. Huber* (1905), 107 App. Div. 599, 95 N. Y. Supp. 348.

§ 107. Notice to beneficiary and other persons interested where real property affected by a trust is conveyed, mortgaged or leased, and procedure thereupon.—The supreme court shall not grant an order under either of the last two preceding sections unless it appears to the satisfaction of such court that a written notice stating the time and place of the application therefor has been served upon the beneficiary of such trust, and every other person in being having an estate vested or contingent in reversion or remainder in said real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof prescribes. The court shall appoint a guardian ad litem for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by the committee duly appointed. The application must be by petition duly verified which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application should be granted. After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted, the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold or leased, upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting for all moneys received by him pursuant to said order.

If the trustee elects not to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be disposed of or invested as the court shall specially direct. Before a mortgage, sale or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and must report the agreement to the court under oath. Upon the confirmation thereof, by order of the court he must execute as directed by the court a mortgage, deed or lease. A mortgage, conveyance or lease made pursuant to a final order granted as provided in this and the last two preceding sections shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being interested in the trust or having estates vested or contingent in reversion or remainder in said real property, and against all other persons so interested or having such estates who shall consent to such order, or who have been made parties to such proceeding as herein provided.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 87, as amended by L. 1897, ch. 136, § 2; L. 1907, ch. 242; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 65, as amended by L. 1895, ch. 886.

Consolidators' note.—See note to § 67. The following language is suggested for insertion in § 107 after the first sentence:

"But if the remaindermen, upon the determination of the trust, shall be persons the identity of whom can not be definitely ascertained until the trust shall have determined, the court may, in its discretion, entertain the application upon proof of service of notice thereof upon all persons who shall then be presumptively entitled to the remainder or some interest therein."

For the reasons assigned in note 7 the following language is suggested for insertion at the close of § 107:

"and against all remaindermen whose identity cannot be definitely ascertained until the trust shall have determined."

The amendment to the former section of the law by L. 1897, ch. 136, does not apply to proceedings instituted prior to the taking effect of that amendment. Such amendment not only changes procedure, but gives to trustees power to sell assets in remainder, which they never had before that amendment was passed, and the scope of the amendment should be confined to cases arising after its passage. *Matter of Asch* (1902), 75 App. Div. 486, 78 N. Y. Supp. 561.

Amendment of 1907.—The opinion in this case in 202 N. Y. 466, 96 N. E. 122, was not intended to construe or interpret the amendment which was made by chapter 242 of the Laws of 1907 to section 87 (now 107) of the Real Property Law. *Matter of Easterly* (1912), 204 N. Y. 586, 97 N. E. 399.

Notice to beneficiary.—It is imperative that every beneficiary have notice. *Duffy v. Durant Land Improvement Co.* (1894), 78 Hun 314, 29 N. Y. Supp. 165.

Validity of final order, see *Matter of Mills* (1898), 22 Misc. 629, 636, 50 N. Y. Supp. 966, *affd.* (1898), 28 App. Div. 258, 50 N. Y. Supp. 995.

When mortgage of trust property not binding upon remaindermen.—When a trust created by will has no relation to vested remainders, the court has no authority to authorize the trustees to mortgage the real estate so as to bind the interest of the remaindermen. *Barker v. Barker* (1916), 172 App. Div. 244, 158 N. Y. Supp. 413.

§ 108. **Person paying money to trustee protected.**—A person who shall actually and in good faith pay a sum of money to a trustee, which the

trustee as such is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payments shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 88; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 66.

Protection of purchaser of trust property.—Where the power to sell is given to the executor for valid purposes of administration, as well as to the trustee, and the estate conveyed was not only the estate held by the trustee and which was necessary “to feed the trust,” but the estate in remainder over which the trustee, as such, had no power or authority, the necessity for the sale, or the expediency of the execution of the power, or the application of the proceeds of the sale need not be inquired into by the purchaser at such sale. *Doscher v. Wyckoff* (1909), 132 App. Div. 139, 116 N. Y. Supp. 389, affg. (1909), 63 Misc. 414, 113 N. Y. Supp. 655.

A bona fide purchaser in good faith from a trustee will be protected regardless of the disposition of the funds by the trustee. *Washburn v. Benedict* (1899), 46 App. Div. 484, 490, 61 N. Y. Supp. 387; *Kirsch v. Tozier* (1894), 143 N. Y. 390, 395, 38 N. E. 375.

Under this section only the person who actually and in good faith pays money to a trustee, which the trustee as such is authorized to receive, is discharged from seeing to the application or being answerable for the misapplication thereof. *Moore v. American Loan & Trust Co.* (1889), 115 N. Y. 65, 78, 21 N. E. 681.

While the general rule is settled that a purchaser is relieved from any concern as to the disposition by the executor or trustee of the purchase money of property purchased from the executor or trustee, this rule does not apply where the purchaser knew that the transaction was not within the usual course of administration, and had notice of the fact that the property of the estate and the rights of the beneficiaries of the testator were put in jeopardy by the negligent, if not fraudulent, co-operation of the purchaser or mortgagee. *Benedict v. Arnoux* (1896), 7 App. Div. 1, 10, 39 N. Y. Supp. 793, revd. on other grounds (1898), 154 N. Y. 715, 49 N. E. 326. See also *Champlin v. Haight* (1843), 10 Paige 274, 282, revd. (1843), 7 Hill 245.

A purchaser from a trustee who had notice at the time of his purchase of an intended breach of trust will not be protected against the equitable claims of beneficiaries. *Champlin v. Haight* (1843), 10 Paige 274, 282, revd. (1843), 7 Hill 245.

Duty of persons dealing with trustee.—Where the principal of a mortgage is paid to a guardian who is authorized to receive it, the mortgagor is not bound to see that the amount is applied for the benefit of the beneficiary. *Forbes v. Reynard* (1906), 49 Misc. 154, 98 N. Y. Supp. 708, affd. (1906), 113 App. Div. 306, 98 N. Y. Supp. 710.

A purchaser of land from a trustee with power to convey only on the happening of an event which is a condition precedent, must ascertain at his peril whether the condition has been fulfilled. The rule is otherwise, however, under a condition subsequent. *Griswold v. Perry* (1872), 7 Lans. 98.

See generally as to application of section, *Belmont v. O'Brien* (1855), 12 N. Y. 394, 402; *Thomas v. Evans* (1887), 105 N. Y. 601, 615, 12 N. E. 571; *Waterman v. Webster* (1888), 108 N. Y. 157, 165, 15 N. E. 380; *Briggs v. Davis* (1859), 20 N. Y. 15; *Losey v. Stanley* (1894), 83 Hun 420, 31 N. Y. Supp. 950, revd. (1895), 147 N. Y. 560, 42 N. E. 8; *Wiltse v. Shaw* (1883), 29 Hun 195, 198, affd. (1885), 100 N. Y. 191, 3 N. E.

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331; *Calkins v. Long* (1859), 22 Barb. 97, 101; *Wilson v. Lynt* (1857), 30 Barb. 124, 133; *McPherson v. Smith* (1888), 49 Hun 254, 2 N. Y. Supp. 60, 62.

§ 109. When estate of trustee ceases.—When the purpose for which an express trust is created ceases, the estate of the trustee shall also cease.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 89; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 67, as amended by L. 1875, ch. 545.

The estate of the trustee ceases with the death of the beneficiary. *Case v. Case* (1896), 16 Misc. 393, 39 N. Y. Supp. 530. And a power ceases when the purpose for which it was created ceases. *Harvey v. Brisben* (1888), 50 Hun 376, 379, 3 N. Y. Supp. 676, *affd.* (1894), 143 N. Y. 151, 38 N. E. 108.

No trust can survive the purpose of its creation, and when that is accomplished the trust must of necessity terminate. *Kahn v. Tierney* (1909), 136 App. Div. 897, 120 N. Y. Supp. 663, *affd.* (1911), 201 N. Y. 516, 94 N. E. 1095.

Title passes by implication of law after the expiration of a trust estate. A conveyance by the trustee is not necessary. *Watkins v. Reynolds* (1890), 123 N. Y. 211, 216, 25 N. E. 322; *Cussack v. Tweedy* (1890), 56 Hun 617, 11 N. Y. Supp. 16, 18, *affd.* (1891), 126 N. Y. 81, 26 N. E. 1033.

See generally, *Matter of Murray* (1908), 124 App. Div. 548, 551, 108 N. Y. Supp. 1047; *Bruner v. Meigs* (1876), 64 N. Y. 506, 517; *Manier v. Phelps* (1884), 15 Abb. N. C. 123, 137; *Briggs v. Davis* (1859), 20 N. Y. 15, 22; *Garvey v. Union Trust Co.* (1898), 29 App. Div. 513, 52 N. Y. Supp. 260; *Cassagne v. Marvin* (1888), 16 N. Y. St. Rep. 327, 1 N. Y. Supp. 590, 592; *Fogarty v. Stange* (1911), 72 Misc. 225, 129 N. Y. Supp. 610.

§ 110. Termination of trusts for the benefit of creditors.—Where an estate or interest in real property has heretofore vested or shall hereafter vest in the assignee or other trustee for the benefit of creditors, it shall cease at the expiration of twenty-five years from the time when the trust was created, except where a different limitation is contained in the instrument creating the trust, or is especially prescribed by law. The estate or interest remaining in the trustee or trustees shall thereupon revert to the assignor, his heirs, devisee or assignee, as if the trust had not been created.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 90; originally revised from R. S., pt. 1, tit. 2, § 67, as amended by L. 1875, ch. 545.

Application.—This section is equally applicable to the trustee of a future or contingent interest in personal property. *Hawley v. Ross* (1838), 7 Paige 103; *Mills v. Husson* (1893), 140 N. Y. 99, 35 N. E. 422.

Effect of section retroactive. *Kip v. Hirsch* (1886), 103 N. Y. 565, 572, 9 N. E. 317; *Mills v. Husson* (1893), 140, N. Y. 99, 35 N. E. 422.

Reverter.—Where the property is a remainder limited on a life estate not yet expired, which remainder passes under an assignment for the benefit of creditors of a partnership, of which the remainderman was a member, he may assert his title against the purchaser at an illegal sale thereof, when the assignment entitled him to any surplus after the firm debts were paid, for under this section there is a reverter to him. *Bush v. Halsted* (1907), 121 App. Div. 538, 106 N. Y. Supp. 133.

See generally, *Green v. Heruz* (1895), 14 Misc. 474, 479; 35 N. Y. Supp. 843, *affd.* (1896), 2 App. Div. 255, 37 N. Y. Supp. 887; *Ne-Ha-Sa-Ne Park Association v. Lloyd* (1898), 25 Misc. 207, 211, 55 N. Y. Supp. 108, *affd.* (1899), 45 App. Div. 631, 61 N. Y. Supp. 1143, *affd.* (1901), 167 N. Y. 431, 60 N. E. 741; *Richards v. Crocker* (1892), 20 N. Y. Supp. 954, 956.

§ 111. **Trust estate not to descend.**—On the death of the last surviving or sole surviving trustee of an express trust the trust estate shall not descend to his heirs nor pass to his next of kin or personal representatives; but in the absence of a contrary direction on the part of the person creating the same, such trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee or trustees, and shall be executed by some person appointed for that purpose under the direction of the court, but who shall not be appointed until the beneficiary or beneficiaries shall have been brought into court by such notice and in such manner as the court or a justice thereof may direct; and the person so appointed shall give such security as the court may require, and shall be subject to the same requirements of law as to accounting and the administration of the trust as are testamentary trustees; and shall be entitled to such compensation for his services by way of commissions as may be fixed by any court which has power to pass upon his final account, which shall in no case exceed that now allowed by law to executors and administrators, besides his just and reasonable expenses in the matter in which he is appointed. (*Amended by L. 1911, ch. 216.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 91, as amended by L. 1902, ch. 151; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 68; L. 1882, ch. 185.

Section not retroactive.—Statutes cutting off descent in case of trusts are to be construed prospectively. *Wood v. Mather* (1862), 38 Barb. 473, 478, *affd.* (1870), 44 N. Y. 249.

Application.—This section is applicable to personal property. The common-law rule was changed by ch. 185 of the Laws of 1882. *Matter of Tousey* (1896), 2 App. Div. 369, 37 N. Y. Supp. 1025. See also *Curtis v. Smith* (1870), 60 Barb. 9; *Emerson v. Bleakley* (1867), 2 Abb. Ct. App. Dec. 22, 28; *Crowe v. Brady* (1879), 5 Redf. 1.

Section has been held not to apply to mere passive and formal trusts. *McCaughal v. Ryan* (1857), 27 Barb. 376, 407.

The supreme court has inherent power to execute a trust and in the absence of a trustee it may and will take upon itself its execution. *Kirk v. Kirk* (1893), 137 N. Y. 510, 515, 33 N. E. 552; *Rogers v. Rogers* (1888), 111 N. Y. 228, 237, 18 N. E. 137. It will not permit a trust to fail for want of a trustee to execute it. *Greenland v. Waddell* (1889), 116 N. Y. 234, 242, 22 N. E. 367.

The estate vests in the supreme court for the enforcement of the trust—not for its destruction. *Tonnele v. Wetmore* (1908), 124 App. Div. 686, 698, 109 N. Y. Supp. 349, *revd.* (1909), 195 N. Y. 436, 88 N. E. 1068.

A trustee of a mere power in trust having died without executing it, its execution will not be assumed by the supreme court as a trust, but will devolve upon the administrator with the will annexed. *Matter of Christie* (1891), 59 Hun 153, 13 N. Y. Supp. 202, *affd.* (1892), 133 N. Y. 473, 31 N. E. 515, following *Mott v. Ackerman* (1883), 92 N. Y. 539.

Where a discretionary power of sale is conferred upon an executor, the court cannot appoint a successor to exercise it. *Matter of Bierbaum* (1886), 40 Hun 504, 507.

A testator gave, devised and bequeathed all the rest, residue and remainder of his property in trust, expressly authorizing and empowering his "executrix and executors or such of them as may act for the time being whenever in their discretion it shall be necessary or expedient to sell any or all of my real estate

either at public or private sale and to execute and deliver good and sufficient deed or deeds for the same." The will also provided as follows: "And I further expressly authorize and empower my said executrix and executors . . . if in their discretion they shall deem it beneficial for those interested instead of selling my real estate for the purpose of partition, to allot and divide to and among my said children and their descendants any part thereof . . . it being my will and intention to leave the right and manner of such partition and allotment wholly to the discretion of my said acting executrix and executors." All the persons named in the will as the executors thereof died without having executed the power of sale. It was held, that the trust being unexecuted vested in the Supreme Court, under section 111 of the Real Property Law, giving said court all the power and duties of the original trustee, and that a sale by a trustee appointed by the court for the purpose of executing the trust was valid. *Forman v. Young* (1915), 166 App. Div. 815, 152 N. Y. Supp. 417.

Power to appoint trustee.—Upon the death of the sole trustee of an express trust, the court has power under this section to appoint a successor upon notice to the actual beneficiary and also to the remaindermen. *Matter of Reinisch* (1897), 20 App. Div. 416, 46 N. Y. Supp. 902.

This section only authorizes the appointment of a new trustee where the only surviving trustee happens to die, so that there is no one left to execute the trust. *Matter of Van Schoonhoven* (1836), 5 Paige 559, 560. Thus, a trust fully executed during the lifetime of the trustee does not vest in the supreme court upon his death. *Matter of Post* (1900), 30 Misc. 551, 559, 64 N. Y. Supp. 369.

Notice to beneficiary is essential to the validity of an order appointing a new trustee. *Matter of Yanz* (1913), 156 App. Div. 239, 141 N. Y. Supp. 262.

Order of appointment.—In case of the death of a trustee after the trust has been partly executed, the court may appoint a person to act as its representative in executing the part of the trust which remains unexecuted. The order appointing such a representative of the court should follow the language of the statute; it should not designate such representative as "substitute trustee," as the statute does not authorize him to be so designated. *Matter of Gueatal* (1904), 97 App. Div. 530, 90 N. Y. Supp. 138.

A beneficiary may be designated pursuant to this section to execute a trust. *Mulry v. Mulry* (1895), 89 Hun 531, 35 N. Y. Supp. 618. The appointment of the *cestui que trust*, as a successor to a deceased testamentary trustee, is simply irregular and not void. *Losey v. Stanley* (1894), 83 Hun 420, 31 N. Y. Supp. 950, *revd.* (1895), 147 N. Y. 560, 42 N. E. 8; *Mulry v. Mulry* (1895), 89 Hun 531, 35 N. Y. Supp. 618. In *People ex rel. Collins v. Donohue* (1893), 70 Hun 317, 325, 24 N. Y. Supp. 437, the court held that an order of the court designating a beneficiary to execute the trust was not void, and could not be attacked collaterally.

Appointment by the surrogate of a trustee upon the death of an executor trustee, see *Matter of Hecht* (1893), 71 Hun 62, 24 N. Y. Supp. 540; *Matter of Valentine* (1884), 3 Dem. 563, 565.

When legal title of trustee does not pass to administrator with will annexed.—Where a testatrix devises lands to executors in trust to invest and reinvest and pay the income to a life beneficiary with remainders over, and gives to the executors a full power of sale and the court has held the same to work an equitable conversion so that the lands are to be treated as personal property, an administrator with the will annexed appointed after the death of the executor does not take his legal title, but merely the power of sale. On the death of the executor the legal title vested in the Supreme Court, which had power to appoint a person to execute the trust, and hence the administrator with the will annexed cannot maintain an action of ejectment. *Kelsey v. MacTigue* (1916), 171 App. Div. 877, 157 N. Y. Supp. 730.

Surrogate's Court may settle accounts of trustee appointed by Supreme Court.—

A Surrogate's Court has power by statute to entertain a proceeding for the judicial settlement of the accounts of a trustee appointed, by the Supreme Court, as the successor of a deceased testamentary trustee named in a will, and any trustee, whether appointed by a last will or testament, or by any other competent authority, is now authorized by express legislative enactment to render his accounts to that court. *Matter of Rink* (1911), 200 N. Y. 447, 94 N. E. 363.

A court of equity in a sister state has no power to make a decree directing trustees to complete contracts for the sale of lands in this state. *Glen v. Gibson* (1850), 9 Barb. 634, 638.

Sale by surviving trustee, see *Johnson v. Fleet* (1835), 14 Wend. 176.

See generally, *Matter of Waring* (1885), 99 N. Y. 114, 1 N. E. 310; *Clark v. Crego* (1867), 47 Barb. 599, *affd.* (1873), 51 N. Y. 646; *Anderson v. Mather* (1870), 44 N. Y. 249; *Matter of Magnus* (1893), 2 Misc. 347, 22 N. Y. Supp. 70, *affd.* (1893), 137 N. Y. 630, 33 N. E. 745; *Delaney v. McCormack* (1882), 88 N. Y. 174, 182; *Wainwright v. Low* (1892), 132 N. Y. 313, 319, 30 N. E. 747; *Correll v. Lauterbach* (1896), 12 App. Div. 531, 535, 42 N. Y. Supp. 143, *affd.* (1899), 159 N. Y. 533, 54 N. E. 1089; *Clark v. Crego* (1867), 47 Barb. 599, 614, *affd.* (1873), 51 N. Y. 646; *Phelps v. Masterton, etc., Co.* (1865), 26 N. Y. Super. (3 Rob.) 517, 525; *Kortright v. Storminger* (1888), 49 Hun 249, 1 N. Y. Supp. 880, 882. See also cases cited under § 20, Personal Property Law.

§ 112. **Resignation or removal of trustee and appointment of successor.**—The supreme court has power, subject to the regulations established for the purpose in the general rules of practice:

1. On his application by petition or action, to accept the resignation of a trustee, and to discharge him from the trust on such terms as are just.

2. In an action brought, or on a petition presented, by any person interested in the trust, to remove a trustee who has violated or threatens to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause shall be deemed to be an unsuitable person to execute the trust.

3. In case of the resignation or removal of a trustee, to appoint a new trustee in his place, and in the meantime, if there is no acting trustee, to cause the trust to be executed by a receiver or other officer under its direction. This section shall not apply to a trust arising or resulting by implication of law, nor where other provision is specially made by law, for the resignation or removal of a trustee or the appointment of a new trustee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 92; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 69–72.

Consolidators' note.—The following subdivisions are suggested for insertion as a part of § 112:

"4. The surrogates' courts in each county shall have the same powers as the supreme court, in respect of the resignation, removal, and appointment of trustees, where the trust has been, or shall be, created by last will and testament.

5. Where title to real property is vested in an executor or administrator as such, the same vests in his successor upon the issuing of letters testamentary or of administration to such successor."

As the surrogate now has, by statute, extensive powers over testamentary trus-

tees, it is highly desirable to make this conformation of the Real Property Law, in order to complete the analogy, and, therefore, to declare that his powers are coextensive with those of the supreme court in the respects denoted. If this addition is adopted it will be necessary to add to § 182 words indicating that the surrogate may not appoint a person to execute a power in trust conferred by deed.

It has been suggested, that an executor or administrator acquiring lands, for example, by foreclosure of a mortgage, is not the trustee of an express trust within the meaning of § 112, but is trustee of an implied trust which will, as at common law, descend to his heirs, or pass to his devisees upon his death. It is well that this question should be settled by statute in a declaratory form.

Trustee may be removed either by bill or petition.—*Harrison v. Union Trust Co.* (1895), 144 N. Y. 326, 39 N. E. 353; *De Witt v. Chandler* (1860), 11 Abb. Pr. 459, 472.

Who may apply for removal of trustee.—It seems that this section, authorizing any person interested in the execution of an express trust to apply for the removal of the trustee upon petition, was only intended to embrace that class of persons who were immediately interested and who might be injured by a violation of the trust or by the insolvency or other incompetency of the trustee. *Livingston's Petition* (1866), 2 Abb. Pr. N. S. 1, 16; *King v. Donnelly* (1835), 5 Paige 46.

Grounds for removal of trustee.—A trustee will not be removed for every violation of duty; or even for a breach of trust, if the fund is in no danger of being lost. There must be such misconduct as shows a want of capacity or fidelity, putting the trust in jeopardy. *Elias v. Schweyer* (1897), 13 App. Div. 336, 43 N. Y. Supp. 55; *Matter of O'Hara* (1891), 62 Hun 531, 17 N. Y. Supp. 91.

The power of the court to remove trustees is not necessarily dependent upon proof of actual misconduct or malfeasance which has prejudiced or impaired the trust estate. If the court can see that relations have grown up between the trustees which are detrimental to the estate, an order may be made which shall, if possible, restore harmony between such trustees, and if necessary to remove the cause of disagreement. *Matter of Russak* (1887), 9 N. Y. St. Rep. 149.

Removal of testamentary trustee.—A testamentary trustee may be removed by the Supreme Court not only for the reasons which would justify such action by a surrogate, but also "for any other cause." *Pyle v. Pyle* (1910), 137 App. Div. 568, 122 N. Y. Supp. 256, *affd.* (1910), 199 N. Y. 537, 92 N. E. 1099.

Where a testamentary trustee is also a surviving partner of his testator, and there is substantial controversy as to the accuracy of his inventory, so that his private interests as partner conflict with his duties as trustee he may be removed. *Matter of Keller* (1911) 142 App. Div. 454 127 N. Y. Supp. 16, *affd.* (1911), 201 N. Y. 590, 95 N. E. 1131.

A resignation takes place within the meaning of this section where a trustee appointed under a will has been relieved from the trust by order of the court upon his own petition. *Lahey v. Kortright* (1892), 132 N. Y. 450, 458, 30 N. E. 989.

No failure of trust for want of trustee. See *McCartee v. Orphan Asylum* (1827), 9 Cow. 437, 484; *Levy v. Levy* (1865), 33 N. Y. 97, 101; *Holland v. Allcock* (1888), 108 N. Y. 312, 330, 16 N. E. 305; *Kirk v. Kirk* (1893), 137 N. Y. 510, 33 N. E. 552; *Greenland v. Waddell* (1889), 116 N. Y. 234, 242, 22 N. E. 367.

Where one of several trustees refuses to accept and execute a trust, the whole estate will vest in the others, who act in the same manner as if he were dead or had not been named as trustee. *King v. Donnelly* (1835), 5 Paige 46.

Powers of court of equity over trustees.—A court of equity, by virtue of its general jurisdiction over trusts, may not only supply a defect in the office of trustee arising from death or resignation, but may also remove a trustee of personal property for misconduct or other causes which would justify the removal of

a trustee of real estate. *Hughes v. Cuming* (1899), 36 App. Div. 302, 306, 55 N. Y. Supp. 256, *revd.* on other grounds (1900), 165 N. Y. 91, 58 N. E. 794.

Appointment of trustee by court.—If a trustee is disqualified for any reason from acting as such, the trust vests in the Supreme Court which will appoint its agent to carry it out. *Ogliby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860, *affd.* (1911), 202 N. Y. 614, 96 N. E. 1123.

It is only in a case where the trustee has resigned or is removed that the statute gives the court the power to appoint a new trustee. Thus, it has been held that a new trustee cannot be appointed by the court upon the death of a surviving trustee. *Brater v. Hopper* (1894), 77 Hun 244, 246, 28 N. Y. Supp. 472; *Willey v. Robinson* (1895), 85 Hun 362, 364, 32 N. Y. Supp. 1018. The trust if then unexecuted vests in the Supreme Court with all the powers and duties of the original trustee, and will be executed by any person appointed for that purpose under the direction of the court. *Willey v. Robinson* (1895), 85 Hun 362, 32 N. Y. Supp. 1018.

This section merely authorizes the court to appoint a new trustee in the place of one who is removed by the court, or whose resignation is accepted after he has once assumed the trust. *Matter of Van Schoonhoven* (1836), 5 Paige 559, 560.

There is nothing to prevent the court from appointing the original creditors of the trust as trustees. *Reed v. Allerton* (1865), 26 N. Y. Super. (3 Rob.) 551, 559.

Removal or discharge of executor having powers of trustee.—Although the Supreme Court has no power to remove an executor, it has the power to remove a trustee as such, notwithstanding the fact that he is an executor. *Widmayer v. Widmayer* (1894), 76 Hun 251, 27 N. Y. Supp. 773.

The removal of an executor also acting as trustee is proper where the relations between him and his co-trustee are such that they will not probably co-operate in carrying out the trust beneficially to those interested. *Quackenboss v. Southwick* (1869), 41 N. Y. 117.

When an executor's duty as such has terminated, and he has become simply a trustee, it seems that the court may remove him for proper cause shown under the statute. *Wood v. Brown* (1866) 34 N. Y. 337, 340; *Leggett v. Hunter* (1859), 19 N. Y. 445. See also *In re Van Wyck* (1846), 1 Barb. Ch. 565, 568, holding that when an executor clothed with trust powers, presented a petition for his discharge, there remaining duties as executor to be performed, such application must be denied. So, it seems that under this section a person may be removed as trustee, leaving him in the exercise of his powers and to discharge the duties of an executor, when the powers and duties are separate and distinct. *Quackenboss v. Southwick* (1869), 41 N. Y. 117, 121.

Parties.—An application to remove a trustee for neglect of duty cannot be maintained unless all the beneficiaries are made parties. *Bear v. American Rapid Telegraph Co.* (1885), 36 Hun 400. All powers interested in a trust, including remaindermen, are necessary parties in an action to remove the trustee. *Elias v. Schwyer* (1897), 13 App. Div. 336, 43 N. Y. Supp. 55.

Objection to irregularity in proceedings for removal.—Upon the removal of a trustee by the court and the appointment of a new trustee in his stead, neither such new trustee nor his surety can object to any irregularity in the proceedings. *People v. Norton* (1853), 9 N. Y. 176.

New trustee; execution of power of sale by.—A power of sale in a will conferred upon the executors or "whoever shall execute this, my will," is not a personal trust or confidence, but can be exercised by trustees appointed to succeed executors and trustees who have resigned. *Royce v. Adams* (1890), 123 N. Y. 402, 25 N. E. 386. See also *Farrar v. McCue* (1882), 89 N. Y. 140; *Cooke v. Platt* (1885), 98 N. Y. 35, 39.

§ 113. Grants and devises of real property for charitable purposes.—1. No gift, grant, or devise to religious, educational, charitable or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or devise there is a trustee named to execute the same, the legal title to the lands or property given, granted, or devised for such purposes shall vest in such trustee. If no person be named as trustee then the title to such lands or property shall vest in the supreme court.

2. The supreme court shall have control over gifts, grants and devises in all cases provided for by subdivision one of this section, and whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant or devise to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustee or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant or devise shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument, without regard to and free from any specific restriction, limitation or direction contained therein; provided, however, that no such order shall be made without the consent of the donor or grantor of the property, if he be living. [*Subd. amended by L. 1909, ch. 144, in effect Apr. 3, 1909.*]

3. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.

Source.—Subd. 1 from L. 1893, ch. 701; subd. 2 from L. 1893, ch. 701, § 2, as amended by L. 1901, ch. 291; subd. 3 from L. 1901, ch. 291.

Consolidators' note.—Section 93 of the former Real Property Law was nothing but a paraphrase of L. 1893, ch. 701. Instead of such paraphrase it would seem best to re-enact L. 1893, ch. 701, as amended by L. 1901, ch. 291, and then to repeal both L. 1893, ch. 701, and L. 1901, ch. 291. Otherwise we have two statutes on the statute book, both relating to the same thing and both phrased in slightly different language. By this course, no change whatever will be made in the substance of existing law.

References.—Gifts and bequests of personal property for charitable purposes, Personal Property Law, § 12. Certain educational and other charitable uses authorized, *Id.* § 13. Certain gifts for charitable and educational uses regulated, *Id.* § 14.

Scope and effect of section.—This section indicates an intention on the part of the legislature to enforce and uphold charitable bequests not heretofore recognized as valid, and it may be regarded as the first step in the direction of modifying that body of law which this court has built upon the ruins of the system outlined in *Williams v. Williams* (1853), 8 N. Y. 525; *Dammert v. Osborn* (1893), 140 N. Y. 30, 43, 35 N. E. 407.

The trust provided for by this section has been referred to as "the fifth express trust authorized by law." *Decker v. Vreeland* (1917), 220 N. Y. 326, 334, 115 N. E. 989, revg. (1915), 170 App. Div. 234, 156 N. Y. Supp. 442.

It restores the ancient law touching charitable uses for indefinite beneficiaries and the practice governing the administration of such trusts. *Allen v. Stevens* (1899), 161 N. Y. 122, 55 N. E. 568. But its scope is expressly limited to the abrogation of the previous law only so far as it invalidated gifts on account of the indefiniteness or uncertainty of the beneficiaries. *Matter of Fitzsimmons* (1899), 29 Misc. 205, 211, 61 N. Y. Supp. 485.

The prohibitions contained in the real and personal property laws against accumulations are not abrogated so as to enable an accumulation for any term of years, providing the future estate, however remote, is given in trust for charity. *St. John v. Andrews Institute* (1908), 191 N. Y. 254, 83 N. E. 981, modfg. (1907), 117 App. Div. 698, 118 N. Y. Supp. 808.

The intention of the legislature in passing the act of 1893, from which this section is derived, was to save to the public charitable gifts made in trust to uncertain and indefinite beneficiaries. Gifts for the benefit of private institutions or individuals were not intended to be included within its provisions. *Matter of Shattuck* (1908), 193 N. Y. 446, 452, 86 N. E. 455, revg. (1907), 118 App. Div. 888, 103 N. Y. Supp. 520. In this case it appeared that the selection of the beneficiaries of a trust was left to the discretion of the trustee, subject only to the limitation that they shall be "religious educational or eleemosynary institutions," and it was held that the trust was void; the word "educational," as used, did not necessarily describe a public or charitable institution within the meaning of the act.

The purpose of this statute was not to abrogate, but to modify, the common-law rule in its application to trusts for religious, educational, charitable and benevolent uses which the courts had theretofore applied as a test of their validity to gifts and grants in trust to be administered in this state, namely, that there must be a beneficiary either named in the instrument creating the trust, or capable of being ascertained within the rules of law applicable in such cases. *Matter of Crum* (1916), 98 Misc. 160, 164 N. Y. Supp. 149.

The amendment of 1901 to the act of 1893 seems to enact the doctrine of *cy pres* to the fullest extent that it has ever been held to have existed in this state, and to warrant its application to trusts for charitable and benevolent purposes where the class of beneficiaries is definite. The amendment applies to trusts created in any manner, whether by documents or by oral language or by conduct. *Loch v. Mayer* (1906), 50 Misc. 442, 100 N. Y. Supp. 837.

Construction.—The spirit of love and religion which is the basis of charity should be exercised in construing the provisions of such acts. A will, however, must sufficiently define the beneficiaries and the purpose of the testator so that the trust can be enforced by the courts, otherwise the will does not come within the provisions of the statute. The gifts must be also for a public and not for a private purpose. *Matter of Robinson* (1911), 203 N. Y. 380, 96 N. E. 925, 37 L. R. A. (N. S.) 1023.

As this section is remedial, it should be liberally construed with a view to the beneficial end proposed. *Allen v. Stevens* (1899), 161 N. Y. 122, 143, 55 N. E. 568, revg. (1898), 33 App. Div. 485, 54 N. Y. Supp. 8. It is not retroactive and does not apply to a devise or bequest in the will of a testator who died before its passage. *Murray v. Miller* (1903), 85 App. Div. 414, 83 N. Y. Supp. 591, *affd.* (1904), 178 N. Y. 316, 70 N. E. 870.

Application.—It seems that this section applies to powers in trust as well as to trusts. *Kelly v. Hoey* (1898), 35 App. Div. 273, 55 N. Y. Supp. 94. And to wills made or probated either before or after its enactment. *Morgan v. Durand* (1906), 51 Misc. 523, 101 N. Y. Supp. 1002.

The statute was not intended to apply to a foreign trust, that is to say, one that was to be executed in a foreign state or country, no matter what its purposes were. *Matter of Crum* (1916), 98 Misc. 160 164 N. Y. Supp. 149.

A gift to a bishop of another state, "in his corporate capacity or to his successor or successors in office," for the erection of a church, is not valid under this act, for the reason that such act only relates to the execution of trusts of personal property within the state, and has no application to such a trust which is to be executed without the state. *Mount v. Tuttle* (1904), 99 App. Div. 433, 91 N. Y. Supp. 195, *affd.* (1906), 183 N. Y. 358, 76 N. E. 873, 2 L. R. A. (N. S.) 428.

A gift to an unincorporated college maintained by a foreign state is not subject to the provisions of this act. Such a college acquires no rights under this act since the act can have no extraterritorial operation, and our courts cannot act as a trustee in a foreign state. The act is designed only to foster permanent charitable trusts within the state. *Catt v. Catt* (1907), 118 App. Div. 742, 103 N. Y. Supp. 740.

Indefinite and uncertain purposes and beneficiaries.—A bequest of a specified sum "to be equally divided between the Indian Missions and Domestic Missions of the United States," is too indefinite to be construed as a direct bequest to any beneficiary. The bequest may, however, be supported as a trust for charitable purposes, and be administered by the Supreme Court. *Bowman v. Domestic and Foreign Missionary Society* (1905), 182 N. Y. 494, 75 N. E. 535 *modifg.* (1904), 100 App. Div. 29, 90 N. Y. Supp. 898.

A will creating and directing trustees to divide the residue of the estate of the testator among such poor families or charitable organizations of a city as they should see fit is not invalid, because of the uncertainty of the beneficiaries. *Kelly v. Hoey* (1898), 35 App. Div. 273, 55 N. Y. Supp. 94.

A bequest to one with the added words, "it being understood between us that she is to spend said amount in charity, both in the Kingdom of Italy and in the City of New York, U. S. A.," is not a personal bequest to the legatee, but was intended to be held by her in trust and used for purposes so indefinite and uncertain as to render the gift void. *Matter of Philbrick* (1911), 74 Misc. 327, 134 N. Y. Supp. 235.

A bequest to an individual to be used "in the Lord's work" does not sufficiently indicate the charitable purpose to which the testator desired to apply the gift to enable the Supreme Court to administer the trust. *Matter of Compton* (1911), 72 Misc. 289, 131 N. Y. Supp. 183.

Where no reason appears why a testatrix should have intended to give her estate absolutely to the person named in her will as the sole legatee, whom she had known but a short time, the gift thereof to him "to use as he may desire in the Master's work" will not be taken as intending an absolute gift but as an attempt to create a trust which is ineffectual because the objects and purposes of the testatrix are so undefined and the beneficiaries are so indefinite and uncertain that the court could not direct the manner in which her intention should be carried out. *Matter of Seymour* (1910), 67 Misc. 347, 124 N. Y. Supp. 437.

The beneficiaries and the purpose of the trust held not to be indefinite. *Starr v. Selleck* (1911) 145 App. Div. 869, 130 N. Y. Supp. 693, *affd.* (1912), 205 N. Y. 545, 98 N. E. 1116.

A bequest to the treasurer of a hospital in trust to be used as she may deem best towards the interest of the hospital is valid. *Matter of Beaver* (1909), 62 Misc. 155, 116 N. Y. Supp. 424.

It seems that a bequest of money to a church in trust to invest and use the proceeds in the purchase of material to be made up by the ladies of the church into garments to be given to poor children, would be valid under the present statute. *Simmons v. Burrell* (1894), 8 Misc. 388, 28 N. Y. Supp. 625.

A devise of property in trust to the rector of a Roman Catholic Church in aid of the parish poor is not void, because of uncertainty of beneficiary since the act of 1893. *Matter of Fitzsimmons* (1899), 29 Misc. 204, 61 N. Y. Supp. 485.

A provision of a will leaving the residue of an estate both real and personal to a trustee "To invest and reinvest the same and collect the income thereof, and from and out of the principal sum so invested and the income and interest collected as aforesaid, from time to time make such reasonable charitable donations, contributions or gifts, to such persons, corporations, associations or institutions in the Town of Guilderland, Albany County, N. Y., as may, in the judgment of my said Trustee be in need and worthy thereof, he having been fully advised of my purposes and inclinations in that respect," constitutes a valid trust for charitable purposes under this section and under the Personal Property Law, section 12. *Matter of Groot* (1916), 173 App. Div. 436, 159 N. Y. Supp. 1003.

Legacy to unincorporated religious association.—A legacy to a volunteer unincorporated religious association cannot be sustained under this act. The act did not change the rule that an unincorporated religious or charitable society cannot take a bequest to it, either absolutely or as trustee. *Fralick v. Liford* (1905), 107 App. Div. 543, 95 N. Y. Supp. 433, *affd.* (1907), 187 N. Y. 524, 79 N. E. 1105, disapproving *Matter of Fitzsimmons* (1899), 29 Misc. 731, 62 N. Y. Supp. 1009, which held that a legacy to a charitable institution will not be permitted to fail merely because the institution is not incorporated. See also *Matter of Scott* (1900), 31 Misc. 85, 64 N. Y. Supp. 577, holding that a bequest to an unincorporated religious body is not void in the indefiniteness of the beneficiaries, but is invalid where there is no statement in the bequest of the purpose for which it was made.

A bequest of one-third of a residuary estate to the treasurer, for the time being, of the "Woman's Presbyterian Synodical Board in Aid of Foreign Missions of the Synod of Albany" which never was incorporated and went out of existence shortly before the will was executed, is invalid, as is also a bequest of one-third of said residuary estate to the treasurer, for the time being, of the "Woman's Presbyterian Synodical Board in aid of Home Missions of the Synod of Albany" also not incorporated. The said two-thirds of said residuary estate will be decreed as undisposed of and pass as in case of intestacy. *Matter of Gray* (1913), 81 Misc. 79, 142 N. Y. Supp. 1067.

Bequest to an orphanage to be formed.—A bequest to an orphanage not in existence at the testator's death, but which was to be founded by an existing corporation is valid under the present statute. *Hull v. Pearson* (1899), 36 App. Div. 224, 55 N. Y. Supp. 324.

A bequest of personal property in trust to be used for free scholarships in an incorporated theological school situated in the Republic of France is a legal bequest for a charitable use under the law of this state. Such bequest does not fail because of the fact that prior to the death of the testatrix the so-called Separation Law of France was passed whereby the beneficiary was disestablished and ceased to be a government institution, if in fact it continued to exist under said act as an independent school of theology maintaining scholarship students. Neither does the trust fail because of the fact that the foreign institution may not be entitled to take legal title as trustee under the French law, for equity will not allow a trust to fail for want of a trustee. Under the circumstances the trust fund will be administered by the Supreme Court of this state and the proceeds transmitted to the foreign beneficiary. *Matter of Miller* (1912), 149 App. Div. 113, 133 N. Y. Supp. 828.

A bequest of money in trust, which contemplates a profitable business enterprise to be incorporated without provision for the issuance of stock, is invalid, and, although productive of a certain degree of benevolence, is not a charitable use, and hence this section does not apply. *Tavshanjian v. Abbott* (1908), 59 Misc. 642,

112 N. Y. Supp. 583, mod. (1909), 130 App. Div. 863, 115 N. Y. Supp. 938, *affd.* (1911), 200 N. Y. 374, 93 N. E. 978.

Validity of bequest to be applied by executors to such charitable and benevolent associations as they may select.—The will of testator provided: "Second. I give and bequeath to my said executors and trustees, hereinafter named, the sum of fifty thousand dollars to be by them applied in their best judgment and discretion to such charitable and benevolent associations and institutions of learning for the general uses and purposes of such associations and institutions as my said executors may select, and in such sums respectively as they may deem proper." It was held, that these provisions are capable of being enforced by judicial decree and are valid. *Matter of Cunningham* (1912), 206 N. Y. 601, 100 N. E. 437.

When a gift of a residuary estate is made to testator's executors, as trustees, to pay the income thereof to his widow during her life with a remainder over to designated persons for the creation of a charitable or educational institution, or if that should be deemed inexpedient, to the enlargement of the endowment of an existing charitable institution, the title to such residuary estate is vested in the trustees, and they, not the Supreme Court, are charged with the duty of executing the trust. *Rothschild v. Schiff* (1907), 188 N. Y. 327, 80 N. E. 1030, *modfg.* (1905), 103 App. Div. 235, 92 N. Y. Supp. 101.

The gift of testator's estate to his executors in trust to sell the same and distribute the proceeds "to any institution conducted for the benefit of the poor and suffering my executors may in their judgment give to any individual or person who in their judgment selected as poor and in need" is valid as a trust for charitable uses. *Matter of Davis* (1912), 77 Misc. 72, 137 N. Y. Supp. 427, *affd.* (1913), 156 App. Div. 911, 141 N. Y. Supp. 1115.

A provision in a will that a testator desires his executor to divide a certain surplus of his estate "among such American charities as they may think well of," with a suggestion as to certain charities to which the testator "would like" the sums to be given, constitutes a gift for charitable uses within the meaning of this section and section 12 of the Personal Property Law. *Manley v. Fiske* (1910), 66 Misc. 388, 123 N. Y. Supp. 129, *modfd.* (1910), 139 App. Div. 665, 124 N. Y. Supp. 149, *affd.* (1911), 201 N. Y. 546, 95 N. E. 1133.

A gift "to the corporation of the Diocese of Central New York to be used as the bishop's residence of said diocese," can be supported as a trust for charitable purpose under this act. *Kingsbury v. Brandegee* (1906), 113 App. Div. 606, 100 N. Y. Supp. 353.

A bequest for Roman Catholic masses to be procured by the executors for the repose of the souls of the testatrix and her parents is a gift for a religious use and is valid notwithstanding the indefiniteness and uncertainty of the beneficiaries. *Matter of Eppig*. (1909), 63 Misc. 613, 118 N. Y. Supp. 683.

A trust, the income to be applied to the payment of the salary of a minister of a designated church may not be equivalent, it seems, to the creation of a trust for a religious or charitable use within the meaning of the act regulating gifts for charitable purposes. If that be the case, the mere fact that at the date of testator's death there were, strictly speaking, no trustees of the church designated, and consequently no person named or definitely described who should execute such trust, would not vitiate the trust, but it would vest in the Supreme Court. *Matter of Powell* (1910), 136 App. Div. 830, 121 N. Y. Supp. 779.

A trust for the maintenance of a burial plot is not void as against perpetuities under section 7 of the Religious Corporation Law, section 13-a of the Personal Property Law, and section 114-a, *post.* *Driscoll v. Hewlett* (1910), 198 N. Y. 297, 91 N. E. 784, *affg.* (1909), 132 App. Div. 125, 116 N. Y. Supp. 466.

A bequest in trust to invest and reinvest the principal and expend the income in keeping the testator's cemetery lot in repair, is not a gift to a religious, edu-

cational, charitable or benevolent use within the meaning of this section. *Matter of Waldron* (1907), 57 Misc. 275, 279, 109 N. Y. Supp. 681.

A bequest to an unincorporated benevolent or charitable association for its own use and not in trust for another is invalid. *Matter of Compton* (1911), 72 Misc. 289, 131 N. Y. Supp. 183.

Failure to designate beneficiary.—For rule prior to the act of 1893, see *People v. Powers* (1895), 147 N. Y. 104, 41 N. E. 432, 35 L. R. A. 502, and cases cited.

Non-resident beneficiaries.—Trusts otherwise valid under this section and under section 12 of the Personal Property Law, may be sustained although the beneficiaries are not necessarily or in terms confined to residents of this state. *Matter of Robinson* (1911), 203 N. Y. 380, 389, 96 N. E. 925, 37 L. R. A. (N. S.) 1023.

The validity of a bequest of personal property located here made by a resident of this state is to be determined by the laws of this state. *Matter of Miller* (1912), 149 App. Div. 113, 133 N. Y. Supp. 828.

Common-law rule of charitable trusts; provisions of will establishing charitable trusts; when trustees thereof entitled to advice and direction of Supreme Court in administration of such trust.—In construing chapter 701 of the Laws of 1893, the first section of which is substantially re-enacted by section 12 of the Personal Property Law and section 113 of the Real Property Law, this court has held that the legislature intended thereby to restore the law of charitable trusts as declared in the case of *Williams v. Williams* (8 N. Y. 525), which holds that the law of charitable uses as recognized in England prior to the Revolution was in force in this state. *Trustees of Sailors' Snug Harbor v. Carmody* (1914), 211 N. Y. 286, 105 N. E. 543, aff. (1913), 158 App. Div. 738, 144 N. Y. Supp. 24.

The will of respondent's testator was executed and admitted to probate upwards of one hundred years ago, and its validity was recognized by the legislature by statutes enacted for the purpose of carrying its provisions into effect; under such legislative recognition and supported by a decision of the Supreme Court of the United States holding the devise therein for charitable purposes to be valid, the corporation and trustees named in the will, and their successors, have ever since that time been engaged in carrying out the intention expressed by the testator. The complaint in this action contains allegations tending to show that the devisees of the trust cannot literally comply with the terms of the will. The advice and direction of the court is now sought in practically the same manner in which their administration of the trust was directed by the Court of Chancery under a statute enacted in 1828. *Held*, that under this statute the Supreme Court is authorized to make a decree in this action in which the attorney-general is defendant, directing the trustees in the administration of the trust in such manner as will more effectually accomplish the intention of the testator. *Idem*.

Section 2 of that act, as amended by chapter 291 of the Laws of 1901, provides that the Supreme Court shall have control over gifts, grants, bequests and devises in all cases provided for by the act, and whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant, bequest or devise to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustee or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant, bequest or devise shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument, without regard to and free from any specific restriction, limitation or direction contained therein. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the court. *Idem*.

Disposition of surplus moneys donated for relief of sufferers.—If moneys donated to a committee for the relief of sufferers from a disaster prove more than sufficient, the surplus belongs to the donors; if they are not ascertainable it reverts to the state. *Boenhardt v. Loeh* (1907), 56 Misc. 406, 107 N. Y. Supp. 786, *affd.* (1908), 129 App. Div. 355, 113 N. Y. Supp. 747, *affd.* (1910), 198 N. Y. 631, 92 N. E. 1078.

Duty of attorney-general.—It is the duty of the attorney-general to enforce the gift by proper proceedings in the Supreme Court and the court may give such directions for the ultimate disposition of the property as the circumstances may require. *Rothschild v. Goldenberg* (1905), 103 App. Div. 235, 92 N. Y. Supp. 1076, *modfd.* (1907), 188 N. Y. 327, 80 N. E. 1030.

Evidence when competent to identify a beneficiary, see *Matter of Wheeler* (1898), 32 App. Div. 183, 52 N. Y. Supp. 943, *affd.* (1900), 161 N. Y. 652, 57 N. E. 1128.

§ 114. **Certain educational and other charitable uses authorized.**—1. Real property may be granted, devised, and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for any one or more of the following purposes:

- (1) To establish and maintain an observatory;
- (2) To found and maintain professorships and scholarships;
- (3) To provide and keep in repair a place for the burial of the dead; or
- (4) For any other specific purposes comprehended in the general objects authorized by their respective charters.

The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustee, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for any of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

2. Real estate may be granted, devised, and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation; and all real estate so granted or conveyed to such corporation may be held by the same, subject to such conditions as may be prescribed and agreed to as aforesaid.

3. Real estate may be granted or devised, to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

4. The trusts authorized by this section may continue for such time as may be necessary to accomplish the purposes for which they may be created.

Source.—L. 1840, ch. 318; L. 1841, ch. 261.

L. 1909, ch. 52.

Uses and trusts.

§§ 114-a, 115.

Consolidators' note.—The following subdivision is suggested for insertion at the close of § 114:

"V. Every such deed of settlement, grant or conveyance, shall, in order to entitle it to the benefits of this section of this act, be recorded in the county or counties where the real property is situated."

It seems expedient to give publicity to such charitable gifts as are *inter vivos*. It conforms to the requirements of L. 1904, ch. 692. Conveyances not recorded are, of course, void as to bona fide purchasers under a deed first recorded. (Section 241, former Real Property Law.) But that section is not always adequate to compel recording in the case of a vested gift or grant to a charitable use, where the donee is in possession.

Reference.—Similar provision as to personal property, Personal Property Law, § 13.

§ 114-a. Trusts for care of cemetery lots, et cetera.—Gifts, grants and devises of real property, in trust for the purpose of applying the proceeds or income thereof to the perpetual care and maintenance, improvement or embellishment of private burial lots in cemeteries, and the walks, fences, monuments, structures and tombs thereon, are permitted and shall be deemed to be for charitable and benevolent uses; and shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the same, nor shall they be deemed invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing herein contained shall affect any existing authority of the courts to pass upon the reasonableness of the amount of such gift, grant or devise. [*Added by L. 1909, ch. 218, in effect Apr. 20, 1909.*]

Reference.—Similar provision as to trust of personal property, Personal Property Law, § 13-a.

The effect of this section is to authorize trusts for the care of cemetery lots and to classify them with charitable and benevolent uses; validating them irrespective or in defiance of the beneficiaries, or of their perpetuity. *Driscoll v. Hewlett* (1910), 198 N. Y. 297, 91 N. E. 784, *affg.* (1909), 132 App. Div. 125, 116 N. Y. Supp. 466.

Application.—This section relates to private burial lots and not to public cemeteries. *Matter of Lyon* (1916), 173 App. Div. 473, 159 N. Y. Supp. 951.

See also cases cited under section 113, *ante*.

§ 115. Certain grants for charitable uses regulated.—1. Any person desiring, in his lifetime, to promote the public welfare by founding, endowing and having maintained a public library, museum or other educational institutions, or a chapel and crematory, within this state, may to that end and for such purposes by grant, in writing, convey to a trustee, or any number of trustees, named in such grant, and to their successors, any real property, belonging to such person, and situated or being within this state.

2. The person making such grant may therein designate:

(1) The nature, object and purposes of the institution to be founded, endowed and maintained.

(2) The name by which it shall be known.

(3) The powers and duties of the trustee or trustees and the manner in which he or they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers which may be necessary to enable such trustee or trustees to fully carry out the object of such grant.

(4) The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed.

(5) Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustee or trustees from making such changes as new conditions may from time to time require.

(6) The place or places where, and the time when, the building or buildings necessary and proper for the institution shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for such lectures, exhibitions, instruction or amusement in connection with such institution as he may deem desirable.

3. The trustee or trustees named in such grant and their successors, may in the name of the institution, as designated in such grant, sue and defend, in relation to the trust property and in relation to all matters affecting the institution endowed and established by such grant.

4. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance and management of such institution, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance and management of such institution, perform all the duties and exercise all the powers, which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustee or trustees named in the grant and their successors.

5. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in para-

graphs numbered one to six inclusive of subdivision two hereof; and may also therein reserve the right, during the life of such person, of absolute dominion over the rents, issues and profits of the real property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same dominion over such rents, issues and profits, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledging and recording of grants of real property.

7. No suit, action or proceeding shall be commenced or maintained by any person to set aside, annul or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustee or trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession or the rents, issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record.

Source.—L. 1892, ch. 516, §§ 1-7, as amended by L. 1905, ch. 393.

Reference.—Similar provision as to personal property, Personal Property Law, § 14.

§ 116. Executors', fiduciaries' and trustees' investments in certain stocks regulated.—Whenever an executor, trustee, guardian of an infant, committee of a lunatic, or other person or persons acting in a fiduciary capacity, or a life tenant, is entitled to receive the proceeds of the sale of any real property sold or to be sold pursuant to the provisions of this article, or pursuant to a judgment in partition, or pursuant to a power of sale contained in a deed or will, and the said property has been or is about to be purchased by a corporation formed or to be formed for such purpose, and all adult beneficiaries and also all adult persons having a vested interest or estate in possession, reversion or remainder in the proceeds of such sale have agreed, or desire to agree that their share of such proceeds shall be invested in the stock and bonds or in either the stock or bonds of such corporation, then the said executor, trustee, guardian, committee or other person or persons acting in a fiduciary capacity, or the life tenant or tenants, may, with the approval of the supreme court, invest his share of the proceeds of such sale in the stock or bonds of such corporation, provided, however, that such corporation shall be prohibited by its certificate of in-

corporation from investing in any stocks, bonds or other securities other than real estate which are not under the laws of this state a proper subject for the investment of trust funds. The supreme court shall not grant an order permitting such an investment, unless it appears to the satisfaction of such court that a written notice stating the time and place of the application for such leave has been served upon every beneficiary and also upon every person in being having a vested interest or estate in possession, reversion or remainder, in such proceeds at least eight days before the making thereof, if such beneficiary or other person is an adult within the state; or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof prescribes. The court shall appoint a special guardian for any minor and for any lunatic, person of unsound mind, or habitual drunkard, who shall not be represented by a committee duly appointed. The application must be by petition duly verified, must be made by the executor, trustee, guardian of an infant, committee of a lunatic, or such other person or persons acting in a fiduciary capacity, or a life tenant, entitled to receive the proceeds of such sale, and shall set forth the reasons for such investment and the nature thereof and the peculiar facts which make it proper that the application shall be granted. After taking proof of the facts either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted, the final order must authorize the said executor, trustee, guardian of an infant, committee of a lunatic, or other person or persons acting in a fiduciary capacity, or life tenant, so entitled to receive the proceeds of such sale, to make such investment upon such terms and conditions as the court may therein prescribe.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 94, as added by L. 1901, ch. 166, and amended by L. 1904, ch. 742.

Consolidator's note.—For the reason assigned in note to § 67, the following is suggested for insertion between the words "as the court or a justice thereof prescribes" and "The court shall appoint":

"But if the remaindermen, upon the determination of a trust shall be persons whose identity cannot be definitely ascertained until the trust shall have determined, the court may in its discretion entertain the application upon proof of service of notice thereof upon all persons who shall then be presumptively entitled to the remainder or some interest therein."

Reference.—Investment of trust funds of personal property, Personal Property Law, § 21.

Application by guardian for leave to convey infant's interest in real property.—Under this section, an application by the guardian of infants as tenants in common of certain real property, for leave to convey the infants' interest, in conjunction with all other owners, to a corporation formed for the purpose of holding the property, and to issue shares of stock of such corporation to the guardian for and on behalf of the infants, will be denied in the exercise of judicial discretion. *Matter of Evans* (1913), 82 Misc. 193, 143 N. Y. Supp. 839.

§ 117. **Commissions of trustees.**—Any trustee, under a deed of trust to sell real property for the benefit of creditors, shall be entitled to and allowed upon an accounting hereafter had, the same commissions as an assignee for the benefit of creditors.

Source.—L. 1896, ch. 249.

Reference.—Similar provision as to trust of personal property, *Personal Property Law*, § 22.

ARTICLE V.

POWERS.

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§ 130. **Effect of article.**—Powers, as they existed by law on the thirty-first day of December, eighteen hundred and twenty-nine, are abolished. Hereafter the creation, construction and execution of powers, affecting real property, shall be subject to the provisions of this article; but this article does not extend to a simple power of attorney to convey real property in the name and for the benefit of the owner.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 110; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 73, 134.

Consolidators' note.—The Revised Statutes abolished powers as then existing (1 R. S. 732, § 73). The Real Property Law repealed 1 R. S. 732, § 73. There was then no law abrogating the old law of powers, so that the language of former § 110 is equivocal. Section 110 should now be re-enacted in the language of the Revised Statutes, so as to cure this defect by making the abolition of the old law of powers positive and express, instead of by implication.

Effect and construction of section.—The law prior to the Revised Statutes as to powers, and the decisions thereunder are of little use in the investigation of the subject of powers as they are now defined and authorized. The language of this statute must be followed. *Jennings v. Conboy* (1878), 73 N. Y. 230, 233; *Cutting v. Cutting* (1881), 86 N. Y. 522, 530. See also *Sweeney v. Warren* (1891), 127 N. Y. 426, 432, 28 N. E. 413.

In considering powers the courts must look to the provision of this article to ascertain the effect which the creation and execution of a power has upon the property subjected to it. *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, affg. (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092.

It is a very rational construction [of this section] to hold that it abolishes all powers theretofore existing in reference to both real and personal estate, and that as to personal estate, the creation, construction and execution of powers are to be governed by the same rules, so far as they can be applied, which govern the creation, construction and execution of powers as to real estate. *Hutton v. Benkard* (1883), 92 N. Y. 295, 305. See also *Cutting v. Cutting* (1881), 86 N. Y. 522.

The statute does not define all the purposes for which a power over property may be created. *Read v. Williams* (1891), 125 N. Y. 560, 569, 26 N. E. 730; *Tilden v. Green* (1891), 130 N. Y. 29, 84, 28 N. E. 880, 14 L. R. A. 33 (dissenting opinion); *Reynolds v. Denslow* (1894), 80 Hun 359, 361, 30 N. Y. Supp. 77.

By the term "construction," the revisers and the legislature meant not merely the meaning and force of the particular words used in creating the power. They had a wider notion in the use of the word, and intended by it what should be the effect in law of the creation and execution of the power upon the property

which was the subject of it, and upon all persons interested therein, closely or remotely. *Cutting v. Cutting* (1881), 86 N. Y. 522, 536.

An instrument, creating a power, like all other instruments, must receive a reasonable construction, and the intention of the party executing the instrument is to be ascertained from the language used, the situation of the parties, and all the surrounding circumstances. *Towler v. Towler* (1894), 142 N. Y. 371, 374, 36 N. E. 869.

Equitable estates.—The words of this article are broad enough to embrace equitable estates. *Selden v. Vermilye* (1849), 4 N. Y. Super. (2 Sandf.) 568, 581, *revd.* (1850), 3 N. Y. 525.

A power of attorney made by one as executrix and sole legatee is valid, though the official character be not added to the signature. *Myers v. Mut. Life Ins. Co.* (1885), 99 N. Y. 1, 1 N. E. 33.

§ 131. Definition of a power.—A power is an authority to do an act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner, granting or reserving the power, might himself lawfully perform.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 111; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 74.

Application.—The above section, so far as powers are concerned, applies to personal, as well as real, property. *Matter of Cooksey* (1905), 182 N. Y. 92, 74 N. E. 880, *aff.* (1905), 100 App. Div. 516, 91 N. Y. Supp. 1091; *Matter of Wilkin* (1904), 90 App. Div. 324, 86 N. Y. Supp. 360, *mod. on rearg.* (1906), 114 App. Div. 916, 100 N. Y. Supp. 1150.

Definition of powers.—A power is not an estate or interest in lands unexercised; it is an incumbrance, and when exercised, the act performed by virtue of it is considered and construed as done by the donor of the power. *Eells v. Lynch* (1861), 21 N. Y. Super. (8 Bosw.) 465, 482. See also *Root v. Stuyvesant* (1837), 18 Wend. 257, 283.

Powers may be created for any lawful purpose. The statute does not enumerate or define the acts which may be done under a power, as in the case of trusts, and they are practically unlimited. *Reynolds v. Denslow* (1894), 80 Hun 359, 361, 30 N. Y. Supp. 77.

As to statutory definitions, see *Towler v. Towler* (1894), 142 N. Y. 371, 36 N. E. 869; *Dempsey v. Tylee* (1854), 10 N. Y. Super (3 Duer.) 73, 97; *Jennings v. Conboy* (1878), 73 N. Y. 234; *Fellows v. Heermans* (1870), 4 Lans. 230, 234; *Leonard v. Am. Bap. Home Mis. Soc.* (1885), 35 Hun 290; *Hotchkiss v. Elting* (1861), 36 Barb. 38, 46; *Townshend v. Frommer* (1891), 125 N. Y. 446, 456, 26 N. E. 805.

Who may grant and receive powers.—A power can only exist by an owner of land, granting or reserving the power to do something which he himself could lawfully perform. *Ludlow v. Van Ness* (1861), 21 N. Y. Super. (8 Bosw.) 178, 192.

A power may be given to a person who has an estate in the land, or to a mere stranger. *Root v. Stuyvesant* (1837), 18 Wend. 257, 283.

Form and execution of powers.—Formal words are not necessary to create a power. If the form adopted to express the intention is ambiguous or incomplete, the intent nevertheless should prevail. *Cahill v. Russell* (1893), 140 N. Y. 402, 406, 35 N. E. 664; *Hubbard v. Gilbert* (1881), 25 Hun 596; *Blanchard v. Blanchard* (1875), 4 Hun 287, *aff.* (1877), 70 N. Y. 615.

To create a valid power, either beneficial or in trust, it is indispensable that the object or objects to be benefited by its execution shall be specified in, or be clearly ascertainable from, the instrument by which the power is attempted to be created. *Sweeney v. Warren* (1891), 127 N. Y. 426, 433, 28 N. E. 413.

The execution of a power will not be defeated because of some provision in excess of the power, which may be eliminated without disturbing the general scheme. *Hillen v. Iselin* (1895), 144 N. Y. 365, 380, 39 N. E. 368.

Provision in a will held too vague and indefinite to create a power. *Henly v. Fitzgerald* (1873), 65 Barb. 508.

A power to lease lands for the purpose of paying charges thereon is within the statutory definition. *Matter of England* (1910), 69 Misc. 523, 127 N. Y. Supp. 881.

The power of leasing and collecting rents, necessarily includes the power of putting in and putting out the tenants. *Tucker v. Tucker* (1851), 5 N. Y. 408, 415.

§ 132. Definitions of grantor, grantee.—The word “grantor” is used in this article, in connection with a power, as designating the person by whom the power is created, whether by grant or by devise; and the word “grantee” is so used as designating the person in whom the power is vested, whether by grant, devise or reservation.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 112; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 135.

See *Van Boskerck v. Herrick* (1873), 65 Barb. 250, 258; *Barber v. Cary* (1854), 11 N. Y. 398.

§ 133. Division of powers.—A power, as authorized in this article, is either general or special, and either beneficial or in trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 113; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 76.

§ 134. General power.—A power is general, where it authorizes the transfer or incumbrance of a fee, by either a conveyance or a will of, or a charge on, the property embraced in the power, to any grantee whatever.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 114; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 77.

General powers; illustrations.—*Coleman v. Beach* (1885), 97 N. Y. 545, 558; *Landon v. Walmuth* (1894), 76 Hun 271, 27 N. Y. Supp. 717.

Power to sell does not include a power to partition. *Sengens v. Fennel* (1907), 54 Misc. 133, 103 N. Y. Supp. 510.

§ 135. Special power.—A power is special where either:

1. The persons or class of persons to whom the disposition of the property under the power is to be made are designated; or,
2. The power authorizes the transfer or incumbrance, by a conveyance, will or charge, of an estate less than a fee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 115; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 78.

A special power is created where a class of persons to whom the disposition of lands under the power is to be made is designated contingently, upon the happening of a certain event, as well as if a class or person is designated. *Wright v. Tallmadge* (1857), 15 N. Y. 307, 314.

§ 136. Beneficial power.—A general or special power is beneficial, where no person, other than the grantee, has, by the term of its creation, any

interest in its execution. A beneficial power, general or special, other than one of those specified and defined in this article, is void.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 116; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 79, 92.

Construction.—The meaning of this section is plain. If by the terms of the creation of the power, no other person than the donee has an interest in its execution, then it is beneficial; or to the same purpose, if the instrument creating the power does not, by its terms, give an interest in its execution to any one else, the donee is the sole beneficiary. *Jennings v. Conboy* (1878), 73 N. Y. 230, 235.

A general beneficial power is created where a grantee of an estate for life takes also a power to alien in fee to any person by will, and no person other than the grantee of the power has, by the terms of its creation, any interest in its execution. *Hume v. Randall* (1894), 141 N. Y. 499, 503, 36 N. E. 402; *Deegan v. Wade* (1895), 144 N. Y. 573, 578, 39 N. E. 692; *Cutting v. Cutting* (1881), 86 N. Y. 522; *Freeborn v. Wagner* (1867), 49 Barb. 43, 54, *affd.* (1868), 2 Abb. App. Dec. 175.

When a power is conferred upon an individual (not upon a trustee), and no person other than the grantee of the power has an interest in its execution, it is beneficial; and so, a power is beneficial when it is silent as to the person to be benefited by its execution. *Sweeney v. Warren* (1891), 127 N. Y. 426, 434, 28 N. E. 413.

Right of a widow, an executrix, to sell under a general beneficial power. *Leonard v. Am. Bap. Home Mis. Soc.* (1885), 35 Hun 290, 294.

For cases illustrating general beneficial powers, see *Hubbard v. Gilbert* (1881), 25 Hun 596; *Crooke v. County of Kings* (1884), 97 N. Y. 421, 448; *Am. Bible Society v. Stark* (1873), 45 How. Pr. 160, 166; *Syracuse Sav. Bank v. Porter* (1885), 36 Hun 168, 170, *affd.* (1887), 105 N. Y. 415, 11 N. E. 950; *Barber v. Cary* (1854), 11 N. Y. 397, 401; *Matter of Perkins* (1910), 68 Misc. 255, 124 N. Y. Supp. 998.

A power is not beneficial when any person other than the grantee has, by the terms of its creation, an interest in its execution upon a certain contingency. *Wright v. Tallmadge* (1857), 15 N. Y. 307.

For powers held not to be beneficial under this section, see *Ackerman v. Gorton* (1876), 67 N. Y. 63, 66; *Coleman v. Beach* (1885), 97 N. Y. 545, 558; *Rose v. Hatch* (1890), 55 Hun 457, 8 N. Y. Supp. 720, *affd.* (1891), 125 N. Y. 427, 26 N. E. 467.

§ 137. **General power in trust.**—A general power is in trust, where any person or class of persons, other than the grantee of the power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from its execution.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 117; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 94.

General power in trust.—A power in trust must "be beneficial to some person, or class of persons other than the grantee of the power, who can compel the due execution of the trust, which person or class of persons must be designated in or be clearly ascertainable from the instrument by which the power is created." *Sweeney v. Warren* (1891), 127 N. Y. 426, 434, 28 N. E. 413. In *Syracuse Sav. Bank v. Holden* (1887), 105 N. Y. 415, 11 N. E. 950, it was held that a conveyance to B., his heirs and assigns forever, in trust for C., with power to sell or mortgage, creates a general power in trust for C.

A power in trust in its essential nature places upon the grantee thereof a duty to execute it in favor of some person or persons other than himself. It involves a form of express fiduciary obligation similar to that of an express trust and it

therein differs from a mere agency, revocable at pleasure, which imposes no duty but merely grants an authority to act. A conveyance by several owners of real property to one of their number with the intention to vest in him as trustee title thereto and sole authority to manage the same for a term of ten years and to sell at his discretion, although invalid as an express trust creates a valid general power in trust to sell but the title to the property and to the proceeds thereof is in the grantors. *Stanley v. Payne* (1909), 65 Misc. 77, 119 N. Y. Supp. 570.

In all cases of a power in trust, an appointee or beneficiary other than the grantee of the power, is contemplated. *Farmers' Loan & Trust Co. v. Carroll* (1849), 5 Barb. 613, 652.

A general power in trust is never to be exercised for the benefit of the donee of the power. *Garvey v. McDevitt* (1878), 72 N. Y. 556, 563. The trustee or devisee of a power in trust cannot sell to himself either directly or indirectly. *Boerum v. Schenck* (1869), 41 N. Y. 182; *Gardner v. Dembinsky* (1900), 52 App. Div. 473, 65 N. Y. Supp. 183, *affd.* (1902), 170 N. Y. 593, 63 N. E. 1117.

For cases illustrating general powers in trust, see *Delaney v. McCormack* (1882), 88 N. Y. 174, 181; in this case the power was held to be imperative, and to survive the death of the executors, *Hetzel v. Barber* (1877), 69 N. Y. 1, 7; *Kinnier v. Rogers* (1870), 42 N. Y. 531, 535; *Russell v. Russell* (1867), 36 N. Y. 581, 583. See also *Clapp v. Byrnes* (1896), 3 App. Div. 284, 38 N. Y. Supp. 1063, *affd.* (1898), 155 N. Y. 535, 50 N. E. 277; *Mut. Life Ins. Co. v. Shipman* (1888), 108 N. Y. 19, 24, 15 N. E. 58; *Mellen v. Banning* (1893), 72 Hun 176, 182, 25 N. Y. Supp. 542; *Gardner v. Dembinsky* (1900), 52 App. Div. 473, 476, 65 N. Y. Supp. 183, *affd.* (1902), 170 N. Y. 593, 63 N. E. 1117; *Doscher v. Wyckoff* (1909), 132 App. Div. 139, 116 N. Y. Supp. 389, *affg.* (1909), 63 Misc. 414, 113 N. Y. Supp. 655. General and special power in trust, illustrations, see *Leggett v. Perkins* (1849), 2 N. Y. 297, 317.

Attempted trusts may be held valid as powers in trusts, so far as the beneficiaries are competent to take by devise. *Downing v. Marshall* (1861), 23 N. Y. 366, 380. Thus, a trust to sell lands, and divide the proceeds among the *cestuis que trustent* as beneficiary owners, and not creditors, is void as a trust, but is valid as a power in trust. *Selden v. Vermilyea* (1847), 1 Barb. 58; *Lathrop v. Lathrop* (1892), 45 N. Y. St. Rep. 404, 18 N. Y. Supp. 651.

The validity of the power depends upon its nature and not upon its execution. *Read v. Williams* (1891), 125 N. Y. 560, 570, 26 N. E. 730. But a lawful purpose is necessary to the execution of a valid power in trust. *Belmont v. O'Brien* (1855), 12 N. Y. 394, 403.

Power in trust and estate in trust; distinction.—*Farmers' Loan & Trust Co. v. Carroll* (1849), 5 Barb. 613, 652. A trust and a power in trust may exist together, in a proper case, where they are not inconsistent. *Belmont v. O'Brien* (1855), 12 N. Y. 394, 404.

Under the common law, a power in trust was known as a power collateral. *Root v. Stuyvesant* (1837), 18 Wend. 257, 284.

Perpetuities.—Powers in trusts are subject to rule against perpetuities. See *Dana v. Murray* (1890), 122 N. Y. 604, 613, 26 N. E. 21; *Matter of Will of Butterfield* (1892), 133 N. Y. 473, 31 N. E. 515; *Booth v. Baptist Church* (1891), 126 N. Y. 215, 28 N. E. 238.

§ 138. Special power in trust.—A special power is in trust, where either,

1. The disposition or charge which it authorizes is limited to be made to a person or class of persons, other than the grantee of the power; or,

2. A person or class of persons, other than the grantee, is designated as entitled to any benefit, from the disposition or charge authorized by the power.

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Source.—Former Real Prop. L. (L. 1896, ch. 547) § 118; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 95.

Special power in trust; illustrations.—*Smith v. Bowen* (1866), 35 N. Y. 83, 89; *Smith v. Floyd* (1893), 140 N. Y. 337, 35 N. E. 606.

§ 139. **Capacity to grant a power.**—A person is not capable of granting a power, who is not, at the same time, capable of transferring an interest in the property to which the power relates.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 119; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 75.

Delegation of power to trustee.—It is indispensable to the creation of a trust or a power in trust that authority to perform the required act should be delegated to the trustee by the owner of the estate, or one having authority to dispose of it, or of some interest therein. *Selden v. Vermilya* (1850), 3 N. Y. 525.

§ 140. **How power may be granted.**—A power may be granted either:

1. By a suitable clause, contained in an instrument sufficient to pass an estate in the real property, to which the power relates;
2. By a devise contained in a will.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 120; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 106.

Construction.—This section should be read and construed with § 99, ante. *Fellows v. Heermans* (1870), 4 Lans. 230.

Execution of power by deed or will.—A power created by deed must be more formal than one created by will. In the latter case, there may be a mere naked power, no estate in the land being given to any one. In the former case, the deed must convey, and be sufficient in form and manner of execution to convey, some estate in the land, and then a power relating to the same land may be granted. *Jennings v. Conboy* (1878), 73 N. Y. 230, 234.

No formal set of words, in a will, is necessary to create or reserve a power. *Dorland v. Dorland* (1847), 2 Barb. 63; *Hubbard v. Gilbert* (1881), 25 Hun 596, 599. Thus, a devise to a widow for life with remainder, should there be any left to children, carries an implied power of sale. *Thomas v. Wolford* (1888), 49 Hun 145, 1 N. Y. Supp. 610.

See, generally, as to the proper execution of a power, *Selden v. Vermilya* (1849), 4 N. Y. Super. (2 Sandf.) 568, 580, revd. (1850), 3 N. Y. 525; *Tucker v. Tucker* (1851), 5 N. Y. 408; *Russell v. Russell* (1867), 36 N. Y. 581; *Fish v. Coster* (1882), 28 Hun 64, affd. (1883), 92 N. Y. 627; *Cutting v. Cutting* (1881), 86 N. Y. 522, 531; *Dempsey v. Tylee* (1854), 10 N. Y. Super. (3 Duer) 73, 97; *Messenger v. Casey* (1883), 18 Wk. Dig. 71.

Absolute power of disposition is effected by the gift of the entire residuary estate to decedent's widow for life, with power to use and enjoy it and without liability to account for either principal or interest. *Matter of Post* (1916), 96 Misc. 531, 160 N. Y. Supp. 684.

§ 141. **Capacity to take and execute a power.**—A power may be vested in any person capable in law of holding, but can not be exercised by a person not capable of transferring real property.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 121; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 109.

Sole trustee as sole beneficiary.—A testator devised real property to two trustees one of whom was his son, the net income thereof to go to such son until the

testator's eldest grandchild should arrive at majority or until the death of his son, and from such time the income was to be paid to testator's grandchildren until the eldest arrived at the age of twenty-five, and thereafter the trust terminated and the estate went to the grandchildren. Thereafter one of the trustees died and left such son as the only surviving trustee. It was *held* that when such co-trustee died the survivor became entitled to the sole possession as well as to the entire rents and profits and therefore under the provisions of this statute his interest became a legal estate in which his beneficial estate merged, and so continued until the eldest grandchild arrived at majority, and when that time arrived the trust estate for the benefit of the grandchildren commenced and continued until the trust under the provisions of the will is terminated. And there is nothing in the provision which makes the son a trustee for himself that is inconsistent with his acts as trustee for his own children for the period specified in the will, and nothing in the provisions of the trust that impairs his right to exercise a power of sale given him by the will. A trust contemplates the holding of property by one for the benefit of another, and consequently the same person may not at the same time be both sole trustee and sole beneficiary of the same interest. *Weeks v. Frankel* (1910), 197 N. Y. 304, 90 N. E. 969, revg. (1908), 128 App. Div. 223, 112 N. Y. Supp. 562.

See generally *Matter of Mayo* (1912), 76 Misc. 416, 136 N. Y. Supp. 1066; *Wadhams v. Am. Home M. Soc.* (1855), 12 N. Y. 415, revg. (1851), 10 Barb. 597.

§ 142. Capacity of married woman to take power.—A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without concurrence of her husband, of real property conveyed or devised to her in fee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 122; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 80.

Construction and effect.—This section is enabling and not restrictive. It was designed to enable the grantor to give the fee to a married woman, with an absolute power of disposition during coverture. *Wright v. Tallmadge* (1887), 15 N. Y. 307. See, generally, *Strong v. Wilkin* (1845), 1 Barb. Ch. 9, 13; *Frazer v. Western* (1845), 1 Barb. Ch. 220, 240; *Jackson v. Edwards* (1838), 7 Paige 386, 400, *affd.* (1839), 22 Wend. 499.

§ 143. Capacity to take a special and beneficial power.—A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To a tenant for life, of the real property embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life; and such a power is valid to authorize a lease for that period but is void as to the excess.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 123; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 87.

Revisers' note.—Unchanged in substance, except that the last clause of subd. 2 is new, and has been inserted to settle a question which has been involved in some obscurity. See *Root v. Stuyvesant* (1837), 18 Wend. 257, 270.

Power of tenant for life to lease. See *Matter of McCaffrey* (1888), 50 Hun 371, 3 N. Y. Supp. 96.

§ 144. **Reservation of a power.**—The grantor in a conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and a power thus reserved shall be subject to the provisions of this article, in the same manner as if granted to another.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 124; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 105.

Power to sell with consent of grantor.—A power is valid which authorizes the trustee to sell the trust property only by and with the consent of the grantor. *Kissam v. Dierkes* (1872), 49 N. Y. 602.

See, generally, *Towler v. Towler* (1894), 142 N. Y. 371, 374, 36 N. E. 869; *Genet v. Hunt* (1889), 113 N. Y. 158, 167, 21 N. E. 91.

§ 145. **Effect of power to revoke.**—Where the grantor in a conveyance reserves to himself for his own benefit, an absolute power of revocation, he is to be still deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 125; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 86.

A power of revocation is recognized by the statute. *Belmont v. O'Brien* (1855), 12 N. Y. 404.

An absolute power of revocation was always regarded in equity as property of the donor, grantor or the donee or grantee of the power. *Matter of Hoyt* (1914), 86 Misc. 696, 702, 149 N. Y. Supp. 91.

§ 146. **Power to sell in a mortgage.**—Where a power to sell real property is given to a mortgagee, or to the grantee in any other conveyance intended to secure the payment of money, the power is deemed a part of the security, and vests in, and may be executed by any person who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 126; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 133.

See *Waterman v. Webster* (1888), 108 N. Y. 157, 164, 15 N. E. 380, *affg.* (1884), 33 Hun 611; *Weed v. Horney* (1885), 35 Hun 580.

§ 147. **When power is a lien.**—A power is a lien or charge on the real property which it embraces, as against creditors, purchasers and incumbrancers in good faith and without notice, of or from a person having an estate in the property, only from the time the instrument containing the power is duly recorded. As against all other persons, the power is a lien from the time the instrument in which it is contained takes effect.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 127; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 107.

Construction and effect.—This section, from the use of the words "without notice," and in "good faith," is susceptible of the construction that it was designed to protect those creditors who, in respect to the property, stood in an analogous position to that of a purchaser in good faith and without notice, such as creditors who had loaned money or given credit to the debtor upon the representation or reasonable assumption that the property belonged to him. *Bennett v. Rosenthal* (1880), 11 Daly 91, 97.

Before execution, the power is a lien or charge upon the lands, and has no greater effect upon the interest of heirs or devisees than a mortgage made by the testator, payable at the time fixed for the execution of the power would have had. *Blanchard v. Blanchard* (1875), 4 Hun 287, 290, *affd.* (1877), 70 N. Y. 615; *Mellen v. Banning* (1893), 72 Hun 176, 25 N. Y. Supp. 542.

This section, which makes a power of sale a lien or charge upon the land, has no application when it had ceased to operate and was of no practical use. *Prentice v. Jamssen* (1880), 79 N. Y. 478.

See, generally, *Hetzell v. Barber* (1876), 6 Hun 534, *modf.* (1877), 69 N. Y. 1; *Sayles v. Best* (1892), 20 N. Y. Supp. 951, *affd.* (1893), 140 N. Y. 368, 35 N. E. 636.

§ 148. When power is irrevocable.—A power, whether beneficial or in trust, is irrevocable, unless an authority to revoke it is granted or reserved in the instrument creating the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 128; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 108.

See *Selden v. Vermilya* (1847), 1 Barb. 58, 62; *Van Boskerck v. Herrick* (1873), 65 Barb. 250, 258; *Bennett v. Rosenthal* (1880), 11 Daly 91, 96; *Smith v. Terry* (1899), 38 App. Div. 394, 397, 56 N. Y. Supp. 447, *affd.* (1901), 166 N. Y. 632, 80 N. E. 1120; *Marvin v. Smith* (1871), 46 N. Y. 571, 577.

§ 149. When estate for life or years is changed into a fee.—Where an absolute power of disposition, not accompanied by a trust, is given to the owner of a particular estate for life or for years, such estate is changed into a fee absolute in respect to the rights of creditors, purchasers and encumbrancers, but subject to any future estates limited thereon, in case the power of absolute disposition is not executed, and the property is not sold for the satisfaction of debts.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 129; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 81.

Purpose of section.—In the enactment of this section and the three following sections it was the evident purpose of the legislature to annihilate the limitations and restrictions upon the power of disposition in cases where a life estate with power to alien in fee by will had been granted or devised except as therein specially provided. *Deegan v. Wade* (1895), 144 N. Y. 573, 39 N. E. 692.

The intent of these sections (§§ 149, 151) must be, that it is only where no estate in remainder is limited on the estate of the grantee of the power that such grantee is entitled to an absolute fee *for all purposes*. And when such remainder is limited, it is a fee absolute *only in respect to the rights of creditors, purchasers, and encumbrancers*, and not with respect to the right of dower. *Barr v. Howell* (1914), 85 Misc. 330, 147 N. Y. Supp. 483.

Application.—The provisions of this section do not apply to a beneficiary of rents and profits who is prohibited from alienating his future income. *Woodbridge v. Bockes* (1901), 59 App. Div. 503, 69 N. Y. Supp. 417, *affd.* (1902), 170 N. Y. 596, 63 N. E. 362.

A power of disposition given by testator to his son, which is accompanied by a trust, does not fall within the provisions of this section. *Higgins v. Downs* (1905), 101 App. Div. 119, 91 N. Y. Supp. 937. Power conferred regarded as one of trust to which this section is not applicable. *Matter of Fernbacher* (1886), 17 Abb. N. C. 339, 350.

Absolute ownership; absolute power of disposition; no distinction.—In reason and good sense there is no distinction between the absolute power of disposition

and absolute ownership. It is an affront to common sense to say that a man has no property in that which he may sell when he chooses, and dispose of the proceeds at his pleasure. *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, *affg.* (1890), 120 App. Div. 347, 104 N. Y. Supp. 1092; *Kull v. Kull* (1885), 37 Hun 476.

When power of disposition absolute.—The power of disposition is only deemed absolute when the grantee of the power is enabled to dispose of the entire fee for his own benefit. *Coleman v. Heach* (1885), 97 N. Y. 545, 558; *Germond v. Jones* (1842), 2 Hill 569, 574; *Terry v. Wiggins* (1872), 47 N. Y. 512, 516; *Van Horne v. Campbell* (1885), 100 N. Y. 287, 300, 3 N. E. 316, 771; see also *Haynes v. Sherman* (1889), 117 N. Y. 433, 438, 22 N. E. 938; *Jackson v. Edwards* (1839), 7 Paige 400, *affd.* (1839), 22 Wend. 498, 509.

The fact that a gift is absolute for purposes of enjoyment with a power of disposition for that object, does not enlarge it into a fee. *M'Keown v. Officer* (1889), 2 Silv. 552, 6 N. Y. Supp. 201, *affd.* (1891), 127 N. Y. 687, 28 N. E. 401.

The right to use funds for one purpose only, viz., the support of the legatee and his family, does not give an absolute power of disposition. *Rose v. Hatch* (1891), 125 N. Y. 427, 26 N. E. 467; followed in *First Nat. Bank of Amsterdam v. Miller* (1898), 24 App. Div. 551, 49 N. Y. Supp. 981, *revd.* (1900), 163 N. Y. 164, 57 N. E. 308.

As to the meaning and construction of the absolute power of disposition specified in §§ 149 to 153, inclusive, see *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 29, *affg.* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092; *Cutting v. Cutting* (1881), 86 N. Y. 522, 536; *Crooke v. County of Kings* (1884), 97 N. Y. 433, 435.

Absolute power of disposition to widow.—A will which devises to the testator's widow all his property, both real and personal, to be "disposed of during her natural life precisely the same as I might do were I living" with a remainder over of the portion of the estate undisposed of, gives to the widow a fee in the land with an absolute power of disposition by her last will. *Hayes v. Gunning* (1906), 51 Misc. 517, 101 N. Y. Supp. 875. But a power given to a widow to sell or dispose of real estate as to her shall "seem just" means just to all interested in the estate, and does not change her estate into a fee. In *re Blauvelt's Estate* (1890), 2 Con. 458, 20 N. Y. Supp. 119, *affd.* (1891), 60 Hun 394, 15 N. Y. Supp. 586, *revd.* (1892), 131 N. Y. 249, 30 N. E. 194.

An absolute power of disposition being given to a wife, free from any trust as to the proceeds, changes her life estate into a fee in respect to her creditors or grantees. *Scheer v. L. I. R. R. Co.* (1908), 127 App. Div. 267, 269, 111 N. Y. Supp. 569; *Leonard v. Am. Bap. Home Mis. Soc.* (1885), 35 Hun 290.

Effect of power of appointment in beneficiary.—Where the beneficiary of a trust is given the power of appointment by will or by deed no fee vests in the donee of the power; during the beneficiary's lifetime the title is vested in the trustee, and her interest is limited to the right to receive the rents and profits and this interest is inalienable. *Farmers' Loan & Trust Co. v. Kip* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092, *affd.* (1908), 192 N. Y. 266, 85 N. E. 59.

When life tenant's power of disposition deemed absolute.—A life tenant does not take an absolute fee by implication, where he can dispose only of the income of the property during his life, and his right to use the corpus for his own benefit is limited to his personal wants and necessities. *Rose v. Hatch* (1891), 125 N. Y. 427, 433, 26 N. E. 467.

A life estate with only a conditional power of disposition does not enlarge the interest or estate of the beneficiary to an absolute fee. *Wells v. Seeley* (1888), 47 Hun 109, 112. Thus, a power of disposition, given to a life tenant, on condition

that it should not be exercised without the approval of the testator's heirs, is not absolute. *Ackerman v. Gorton* (1876), 67 N. Y. 63, 66.

But the right of a beneficiary to have and use deposits, interest and principal, or so much thereof as he may wish to use during his lifetime, implies an absolute power of disposition. *Matter of Haskell* (1896), 19 Misc. 206, 43 N. Y. Supp. 1144.

The rule before the Revised Statutes was that the devise of an estate generally with power of disposition carried a fee, but not if the estate were given for life merely. 4 Kent. 319, 327; see *Jackson ex dem. Livingston v. Robbins* (1819), 16 Johns. 537.

Disposition by will.—A general power to dispose of property includes the right to dispose of it by will, unless the grant of the power contains words which expressly or by fair implication exclude such a method of disposition. *Matter of Gardner* (1893), 140 N. Y. 122, 35 N. E. 439.

See generally, *Dudley v. People's Trust Co.* (1907), 57 Misc. 230, 107 N. Y. Supp. 930; *Ludlow v. Van Ness* (1861), 21 N. Y. Super. (8 Bosw.) 178, 193; *Hume v. Randall* (1894), 141 N. Y. 499, 505, 36 N. E. 402; 9m. Bib. Soc. v. Stark (1873), 45 How. Pr. 160, 166; *Wendt v. Walsh* (1900), 164 N. Y. 155, 159, 58 N. E. 2; *Baumgras v. Baumgras* (1893), 5 Misc. 8, 13, 24 N. Y. Supp. 767; *Stafford v. Washburn* (1911), 145 App. Div. 784, 130 N. Y. Supp. 571, revd. (1913), 208 N. Y. 536, 101 N. E. 1122.

§ 150. Certain powers create a fee.—Where a like power of disposition is given to a person to whom no particular estate is limited, such person also takes a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors, purchasers and incumbrancers.

Source.—Former Real Prop. L. (L. 1896, ch. 547), § 130; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 82.

Effect of section.—The will of a testator is always to some extent defeated by the operation of this section. A testator intending to give a fee would never do it by simply giving an absolute power of sale. *Crooke v. County of Kings* (1884), 97 N. Y. 433, 451.

Fee given by implication.—A devise with power of absolute disposition, unless a life estate is expressly limited to the devisee, passes a fee by implication. *Taggart v. Murray* (1873), 53 N. Y. 233, 238.

Executors, given an absolute power of disposition, may take an absolute fee. *Kinnier v. Rogers* (1870), 42 N. Y. 531, 534.

See, generally, *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, affg. (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092; *Dudley v. People's Trust Co.* (1907), 57 Misc. 230, 107 N. Y. Supp. 930; *Hume v. Randall* (1894), 141 N. Y. 499, 504, 36 N. E. 402; *Freeborn v. Wagner* (1868), 2 Abb. Ct. App. Dec. 175, 182; *Blanchard v. Blanchard* (1875), 4 Hun 287, 290, affd. (1877), 70 N. Y. 615; *Matter of Perkins* (1910), 68 Misc. 255, 124 N. Y. Supp. 998.

§ 151. When grantee of power has absolute fee.—Where such a power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 131; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 83.

See *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, affg. (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092; *Hetzell v. Barber* (1877), 69 N. Y. 1; *Connolly v. Connolly* (1907), 122 App. Div. 492, 496, 107 N. Y. Supp. 185; *Dudley v. People's Trust Co.* (1907), 57 Misc. 230, 107 N. Y. Supp. 930; *Stafford v.*

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Washburn (1911), 145 App. Div. 784, 130 N. Y. Supp. 571, *affd.* (1913), 208 N. Y. 536, 101 N. E. 1122.

§ 152. **Effect of power to devise in certain cases.**—Where a general and beneficial power to devise the inheritance is given to a tenant for life, or for years, such tenant is deemed to possess an absolute power of disposition within the meaning of and subject to the provisions of the last three sections.

Source.—Former Real Prop. L. (L. 1896, ch. 547), § 132; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 84.

Effect of section.—This section makes the power of disposition equivalent to absolute ownership. *Freeborn v. Wagner* (1867), 49 Barb. 43, 55, *affd.* (1868), 4 Keyes 27.

See, generally, *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, *affg.* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092; *Dudley v. People's Trust Co.* (1907), 57 Misc. 230, 107 N. Y. Supp. 930; *Trask v. Sturges* (1900), 31 Misc. 195, 202, 63 N. Y. Supp. 1084, *affd.* (1900), 56 App. Div. 625, 68 N. Y. Supp. 1149, *revd.* (1902), 170 N. Y. 482, 63 N. E. 537; *Am. B. Soc. v. Stark* (1873), 45 How. Pr. 160, 166.

§ 153. **When power of disposition absolute.**—Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 133; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 85.

Revisers' note.—Unchanged in substance. See *Jackson v. Edwards* (1839), 7 Paige 386, *affd.* (1839), 22 Wend. 498, 509.

The definition of an absolute power of disposition applies to personal property. *Seaward v. Tasker* (1913), 143 N. Y. Supp. 257, 271, *revd.* (1915), 156 N. Y. Supp. 243.

Construction; entire fee.—When the revisers speak of the power of disposition as being equivalent to absolute ownership, they mean that power of disposition by which a person is enabled, in his lifetime, to dispose of the "entire fee for his own benefit." The word "entire" must be given its proper meaning and emphasis in the context of the statute, and unless that word includes the right to give possession as well as to convey title it has no meaning. *Farmers' Loan & Trust Co. v. Kip* (1908), 192 N. Y. 266, 85 N. E. 59, *affg.* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092.

This section providing that every power of disposition by means of which the grantee is enabled in his lifetime to dispose of the entire fee for his own benefit, is deemed absolute, does not mean that such grantee shall have a fee, but merely that the power to dispose of the entire fee shall be absolute. *Hasbrouck v. Knoblanck* (1909), 130 App. Div. 378, 384, 114 N. Y. Supp. 949.

Life estate to husband; absolute fee.—The devise of a life estate by a testatrix to her husband, with liberty to use as much of the property as he may need without accounting to the heirs, there being no remainders over, vests in the husband an absolute fee. *Ryder v. Lott* (1908), 123 App. Div. 685, 108 N. Y. Supp. 46, *affd.* (1910), 199 N. Y. 543, 93 N. E. 1131.

See, generally, *Hart v. Castle* (1890), 30 N. Y. St. Rep. 701, 9 N. Y. Supp. 622; *Stafford v. Washburn* (1911), 145 App. Div. 784, 130 N. Y. Supp. 571, *revd.* (1913), 208 N. Y. 536, 101 N. E. 1122.

§ 154. **Power subject to condition.**—A general and beneficial power may

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be created subject to a condition precedent or subsequent, and until the power becomes absolutely vested it is not subject to any provisions of the last four sections.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 134.

Revisers' note.—It seems wise to place this provision in statutory form, although it is probably the law. See *Taggart v. Murray* (1873), 53 N. Y. 238; *Wright v. Tallmadge* (1857), 15 N. Y. 307, 309.

§ 155. Power of life tenant to make leases.—The power of a tenant for life to make leases is not assignable as a separate interest, but is annexed to his estate, and passes by a grant of such estate unless specially excepted. If so excepted, it is extinguished. Such a power may be released by the tenant to a person entitled to an expectant estate in the property, and shall thereupon be extinguished.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 135; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 88, 89.

§ 156. Effect of mortgage by grantee.—A mortgage executed by a tenant for life, having a power to make leases, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein, and the effects on the power of such lien by mortgage are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his debt requires; and,
2. That any subsequent estate, created by the owner, in execution of the power, becomes subject to the mortgage as if in terms embraced therein.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 136; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 90, 91.

§ 157. When a trust power is imperative.—A trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled for the benefit of the person interested. A trust power does not cease to be imperative where the grantee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 137; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 96, 97.

Imperative trust power; language of.—The imperative nature of the trust is not destroyed because the language creating the power is permissive. *Smith v. Floyd* (1893), 140 N. Y. 337, 341, 35 N. E. 606. Or in the alternative. *Meldon v. Devlin* (1898), 31 App. Div. 146, 155, 53 N. Y. Supp. 172, *affd.* (1901), 167 N. Y. 573, 60 N. E. 1116. As was said by the learned judge who wrote in *Dominick v. Sayre* (1850), 5 N. Y. Super. (3 Sandf.) 555, and who was one of the framers of this statute: "Words of mere authority have the same efficacy in creating a trust as a positive direction. The words, in their ordinary acceptation, may be discretionary, but in a court of equity are mandatory."

A power of sale founded upon a valuable consideration, no power of revocation having been reserved, is imperative. *Selden v. Vermilyea* (1847), 1 Barb. 58.

A power of sale is imperative even though a discretion is reposed in the executors as to the time of sale. *Walbridge v. Brooklyn Trust Co.* (1911), 143 App. Div. 502, 507, 128 N. Y. Supp. 686.

A gift of real estate to executors, with the right to receive the rents and profits, and with direction to sell and divide the proceeds upon the death of the widow, creates a power in trust, general and imperative. *Matter of Keenan* (1895), 15 Misc. 368, 38 N. Y. Supp. 426.

Imperative power implied.—The fact that the trustee has the discretion to select the objects and the amount to be given, does not make the power given to him less imperative. *People v. Powers* (1894), 83 Hun 449, 455, 29 N. Y. Supp. 950, *revd. on other grounds* (1895), 147 N. Y. 104, 41 N. E. 432, 35 L. R. A. 502. A direction to executors to divide the proceeds of a sale, being imperative, implies a power of sale imperative to that end. *Waldron v. Schlang* (1888), 47 Hun 252, *affd.* (1889), 113 N. Y. 665, 21 N. E. 1115.

Wherever a power or authority to sell is given without limitation, and is not in terms made discretionary, and its exercise is rendered necessary by the scope of the will and its discretionary purposes, the authority is to be deemed imperative, and a direction to sell will be implied, provided the design and purpose of the testator is unequivocal and the implication so strong as to leave no substantial doubt, and his intention cannot otherwise be carried out. *Matter of Gantert* (1892), 136 N. Y. 106, 110, 32 N. E. 551.

Other cases illustrating imperative powers in trust. *Crocheron v. Jaques* (1838), 3 Edw. Ch. 207, 212; *Arnold v. Gilbert* (1849), 5 Barb. 190, 198; *Moncrief v. Ross* (1872), 50 N. Y. 431; *Fellows v. Heermans* (1870), 4 Lans. 230, 238; *Hughes v. Mackin* (1897), 16 App. Div. 291, 295, 44 N. Y. Supp. 710; *Van Boskerck v. Herrick* (1873), 65 Barb. 250, 257; *Stewart v. Hamilton* (1885), 37 Hun 19, 22; *Mott v. Ackerman* (1883), 92 N. Y. 539, 551; *Delaney v. McCormack* (1882), 88 N. Y. 174, 182.

When power not imperative.—A power to create a future estate reserved by a grantor will never be regarded as imperative if the execution depends entirely upon the will of the donee. *Towler v. Towler* (1894), 142 N. Y. 371, 376, 36 N. E. 869. A power of sale, being left to the "best judgment" of the executor, is not imperative. *Matter of Johnson* (1897), 18 App. Div. 371, 46 N. Y. Supp. 53. So, where the execution of a power has been left to the option of the executors, it is not mandatory and cannot be enforced by the court. *Webber v. Lester* (1890), 31 N. Y. St. Rep. 268, 10 N. Y. Supp. 258, *affd.* (1891), 125 N. Y. 742, 27 N. E. 407.

See, generally, *Hayes v. Kerr* (1897), 19 App. Div. 91, 45 N. Y. Supp. 1050; *Coleman v. Beach* (1885), 97 N. Y. 545.

Effect of death of donee of imperative power in trust.—When the donee of an imperative power in trust dies without executing it, equity will regard as done what it was the duty of the trustee to do, and so the title vests in the person for whose benefit the power was created. *Towler v. Towler* (1894), 142 N. Y. 371, 374, 36 N. E. 869. But in *Hotchkiss v. Elting* (1861), 36 Barb. 38, 46, it was held that the death of a person to whom a power has been granted extinguishes the power and renders its execution impossible.

The validity of a power of sale given to executors by a will is primarily a question for a court of law as distinguished from a court of equity. *Mellen v. Mellen* (1893), 139 N. Y. 210, 34 N. E. 925.

When equity will enforce execution of trust power.—It is only when a power is in trust that a court of equity will decree its execution. *Towler v. Towler* (1894), 142 N. Y. 371, 36 N. E. 869. Equity will not interfere, however, to compel the execution of a power where its purpose has already been accomplished. *Prentice v. Janssen* (1880), 79 N. Y. 478, 486.

A nonenforceable trust power is an impossibility under our law, unless, by the instrument creating it, it is expressly made to depend for its execution on the will of the grantee. *Tilden v. Green* (1891), 130 N. Y. 29, 54, 28 N. E. 880, 14 L. R. A. 33.

A creditor whose debt is directed by the will to be paid and for the satisfaction of which the personal estate proves insufficient may compel the execution of an imperative power of sale. *Matter of Gantert* (1892), 136 N. Y. 106, 110, 32 N. E. 551. And if the trustee of an imperative power in trust fails to exercise his judgment so as to accomplish the purpose of the will, the court may put him in motion or act in his place. It will not permit the beneficiaries to suffer from the trustee's negligence or misconduct. *Haight v. Brisbin* (1884), 96 N. Y. 132, 136.

The obligation of a trustee, holding a mortgage in trust for minors, is imperative, and may be enforced in equity. *Kirsch v. Tozier* (1892), 63 Hun 607, 611, 18 N. Y. Supp. 334, *affd.* (1894), 143 N. Y. 390, 38 N. E. 375.

The doctrine of equitable conversion applies, where it is apparent from the general provisions of the will that the testator intended a sale, although the power of sale is not in its terms imperative. *Power v. Cassidy* (1880), 79 N. Y. 602, 614. But a power given to an executor to sell, mortgage or convey real estate does not work a constructive change of the property unless such power be imperative, or unless the executor exercise it. *Clift v. Moses* (1889), 116 N. Y. 144, 158, 22 N. E. 393.

The vesting of the fee is suspended by a general imperative power in trust until the power is executed and the estate is terminated. *Dana v. Murray* (1890), 122 N. Y. 604, 613, 26 N. E. 21.

Substitution of new trustees.—A general power in trust and imperative is subject to the same provisions, as to the substitution of new trustees, as are applicable to express trusts. *Farrar v. McCue* (1882), 89 N. Y. 139, 144; *Delaney v. McCormack* (1882), 88 N. Y. 174, 182.

§ 158. Distribution when more than one beneficiary.—Where a disposition under a power is directed to be made to, among, or between, two or more persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed among the persons so designated, in such manner or proportions as the grantee of the power thinks proper, the grantee may allot the whole to any one or more of such persons in exclusion of the others.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 138; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 90, 98.

Application.—Where a power is given to a donee to appoint property to "all, any or either" of several persons named, or to all, any or either lawful issue, the word "or," in the absence of any indication of a contrary intent, has a discretionary not a substantial import. *Drake v. Drake* (1892), 134 N. Y. 220, 32 N. E. 114, 17 L. R. A. 664.

The word children, in common parlance, does not include grandchildren, or any persons other than the immediate descendants in the first degree of the person named as the ancestor. *Shannon v. Pickell* (1889), 55 Hun 127, 130, 8 N. Y. Supp. 584.

Under a will providing as follows "I hereby direct my executors and executor to distribute and apportion to my wife and children (naming them) my estate in such manner and time or times as shall, in their judgment, be for the best interest of my wife and children," it was held that the estate was left in equal

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shares to the decedent's wife and his six children; and that the term "manner" applied to the method of allotment; that a discretion was given as to the time when the money should be paid over, but not as to the quantity of the estate to be distributed to each beneficiary. *Matter of Conner* (1896), 6 App. Div. 594, 39 N. Y. Supp. 900, *affd.* (1898), 155 N. Y. 627, 49 N. E. 1095.

See, generally, *Tilden v. Green* (1891), 130 N. Y. 29, 28 N. E. 880, 14 L. R. A. 33.

§ 159. Beneficial power subject to creditors.—A special and beneficial power is liable to the claims of creditors in the same manner as other interests that can not be reached by execution; and the execution of the power may be adjudged for the benefit of the creditors entitled.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 139; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 93.

Construction and effect.—The court, per Folger, Ch. J., in *Cutting v. Cutting* (1881), 86 N. Y. 522, 541, said: "We do not read this section as declaratory that every special and beneficial power, *ipso facto*, that it is a special and beneficial power, is liable to the claims of creditors, but as declaratory, that when a special and beneficial power, by reason of the provisions of the article operating on the terms of the power, is liable to the claims of creditors, the liability is enforceable by creditor's bill, or in any other manner that other debtor interests that cannot be reached by law, may be reached in equity; and that when the grantee of the power refuses or neglects to execute the power or mistakes in the manner of the execution, the execution in proper mode may be decreed for the benefit of any creditor who has a right thereby."

See, generally, *Sayles v. Best* (1893), 140 N. Y. 368, 35 N. E. 636; *Marvin v. Smith* (1870), 56 Barb. 600; (1871), 46 N. Y. 571.

§ 160. Execution of power on death of trustee.—If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as beneficiaries of the trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 140; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 100.

Want of trustee; effect upon power in trust.—It is a well-settled principle, that a court of equity will not permit a devise in trust, which is valid in other respects, to fail for the want of a trustee. *Leggett v. Hunter* (1859), 19 N. Y. 445, 459. Thus, where a power in trust is imperative and the trustee dies, equity will regard that as done which the trustees should have done. *Smith v. Floyd* (1893), 140 N. Y. 337, 340, 35 N. E. 606.

Where a power of appointment is conferred, and the property to be disposed of and its recipients are both certain, the latter obtain vested rights which cannot be destroyed by the nonaction of the donee of the power. *Meldon v. Devlin* (1898), 31 App. Div. 146, 157, 53 N. Y. Supp. 172, *affd.* (1901), 167 N. Y. 573, 60 N. E. 1116.

Application and effect.—This section is only applicable to a trust power with an arbitrary and absolute right of selection. *Hawley v. James* (1835), 5 Paige 318, 468, *revd.* (1836), 16 Wend. 61.

This section makes a new law, and the old decisions prior to the enactment of the Revised Statutes do not apply. *Hoey v. Kenny* (1857), 25 Barb. 396, 399. But see *Dominick v. Sayre* (1850), 5 N. Y. Super. (3 Sandf.) 555, 559, holding that this section is simply declaratory of former decisions.

See, generally, *Delaney v. McCormack* (1882), 88 N. Y. 174, 182; *Holland v.*

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Alcock (1888), 108 N. Y. 312, 320, 16 N. E. 305; Shannon v. Pickell (1889), 55 Hun 127, 8 N. Y. Supp. 584; Read v. Williams (1891), 125 N. Y. 560, 569, 26 N. E. 730.

§ 161. **When power devolves on court.**—Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution devolves on the supreme court.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 141; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 101.

The intent of this section is to regulate and fix by law, what had been merely the practice of the court. Meakings v. Cromwell (1851), 5 N. Y. 136, affg. (1849), 4 N. Y. Super. (2 Sandf.) 512, 516. It is settled law, since the year books, that a power given in a will, to sell land, for the purpose of paying debts and legacies, or for making division of the proceeds, without naming the donee, will vest in the executors by implication. Bogert v. Hertell (1842), 4 Hill 492, 500.

Powers of supreme court to execute trust.—The supreme court has inherent power to execute a trust, and in the absence of a trustee it may, and will, take upon itself its execution. Kirk v. Kirk (1893), 137 N. Y. 512, 514, 33 N. E. 552. See also Holland v. Alcock (1888), 108 N. Y. 312, 320, 16 N. E. 305; Crocheron v. Jaques (1838), 3 Edw. Ch. 207, 212.

§ 162. **When creditors may compel execution of trust power.**—The execution, wholly or partly, of a trust power may be adjudged for the benefit of the creditors or assignees of a person entitled as a beneficiary of the trust, to compel its execution, where his interest is assignable.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 142; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 103.

Enforcement of execution of trust power by assignee.—See Clark v. Crego (1867), 47 Barb. 599, 614, affd. (1873), 51 N. Y. 646; Marvin v. Smith (1870), 56 Barb. 600, 606, affd. (1871), 46 N. Y. 571.

§ 163. **Defective execution of trust power.**—Where the execution of a power in trust is defective, wholly or partly, under the provisions of this article, its proper execution may be adjudged in favor of the person designated as the beneficiary of the trust.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 143; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 131.

Execution of trust power.—The execution of a power will not be defeated because of some provision in excess of the power, which may be eliminated without disturbing the general scheme. Hillen v. Iselin (1895), 144 N. Y. 365, 380, 39 N. E. 368.

The general rule is, that to the due execution of a power, there must be a substantial compliance with every condition required to precede or accompany its exercise. Allen v. De Witt (1850), 3 N. Y. 276.

An executor may be compelled, in equity, to perfect his executory contract for the sale of the testator's real estate. Bostwick v. Beach (1886), 103 N. Y. 414, 9 N. E. 41.

Execution of power of appointment. See Austin v. Oakes (1888), 48 Hun 492, 1 N. Y. Supp. 307, modf. (1890), 117 N. Y. 577, 23 N. E. 193.

§ 164. **Effect of insolvent assignment.**—A beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass, respectively, to a trustee or committee of the estate of the per-

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son in whom the power or interest is vested, or an assignee for the benefit of creditors.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 144; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 104.

See *Clark v. Crego* (1867), 47 Barb. 599, 613, *affd.* (1873), 51 N. Y. 646; *Marvin v. Smith* (1870), 56 Barb. 600, 606, *affd.* (1871), 46 N. Y. 571.

§ 165. How power must be executed.—A power can be executed only by a written instrument, which would be sufficient to pass the estate, or interest, intended to pass under the power, if the person executing the power were the actual owner.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 145; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 113.

See *Barber v. Carey* (1854), 11 N. Y. 397; *Jackson v. Edwards* (1839), 22 Wend. 498, 508; *Van Boskerck v. Herrick* (1873), 65 Barb. 250, 258.

§ 166. Execution by survivors.—Where a power is vested in two or more persons, all must unite in its execution; but if before its execution, one or more of such persons dies, the power may be executed by the survivor or survivors.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 146; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 112.

Execution of power vested in two or more persons.—It is a general rule that where authority is given to two or more persons to do an act, the act is valid to bind the principal only when all of them concur in doing it. *Holtsinger v. Nat. Corn Exch. Bank* (1869), 6 Abb. Pr. N. S. 292, 296, *affd.* (1870), 40 How. Pr. 720. Thus, a power vested in both an executor and executrix, who have qualified and are alive, must be executed by them jointly. *Whitlock v. Washburn* (1891), 62 Hun 369, 373, 17 N. Y. Supp. 60; see also *Van Boskerck v. Herrick* (1873), 65 Barb. 250, 258; *Matter of Van Wyck* (1846), 1 Barb. Ch. 565, 569; *Ogden v. Smith* (1830), 2 Paige 195, 198; *Taylor v. Morris* (1848), 1 N. Y. 341, 358.

Real estate, being vested by will in two executors in trust, can only be conveyed by a joint deed. One executor cannot make any agreement to convey which will be binding upon the other. *Wilder v. Ranney* (1884), 95 N. Y. 7.

Authority of surviving trustees to convey real property.—Where a will provides that, if the number of trustees thereunder shall be reduced to less than three, then the survivors shall (with the approval of the *cestui que trust*, if of full age, but otherwise without such approval) increase their number to not less than three nor more than five persons, and after the death of one of the three trustees appointed by the will, the *cestui que trust*, being of full age, refuses to consent to the appointment of a successor, the survivors may without application to the Supreme Court convey a marketable title to real property held in trust. *Lane v. Hustace* (1913), 154 App. Div. 636, 139 N. Y. Supp. 784.

Power of sale may be executed by surviving executors.—*Danaher v. Hildebrand* (1911), 72 Misc. 240, 131 N. Y. Supp. 127.

A power of sale may be executed by surviving trustees. *Lewine v. Gerardo* (1908), 60 Misc. 261, 265, 112 N. Y. Supp. 192. But a testator may place limitations on the exercise of powers granted by him. Thus, a power of sale directing the executors and trustees to act jointly and not singly is terminated by the death of one of them. *Herriott v. Prime* (1895), 87 Hun 95, 33 N. Y. Supp. 970, *affd.* (1898), 155 N. Y. 5, 49 N. E. 142.

Execution of power by remaining trustees.—Where power to sell is given to two

or more executors or trustees *ratione officii* and one resigns or is removed before the power has been fully executed, the remaining executors or trustees may validly execute the power. *Striker v. Daly* (1916), 175 App. Div. 620, 162 N. Y. Supp. 527.

Execution of power of sale by administrator with will annexed.—Where a power of sale is given to executors for the purpose of paying debts and legacies, and especially where there is an equitable conversion of land into money for the purpose of such payment and for distribution, and the power of sale is imperative and does not grow out of a personal discretion confided to the individual, such power belongs to the office of executor, and under the statute, passes to and may be exercised by the administrator with the will annexed. *Mott v. Ackerman* (1883), 92 N. Y. 539, 554. See also *Greenland v. Waddell* (1889), 116 N. Y. 234, 240, 22 N. E. 367.

§ 167. **Execution of power to dispose by devise.**—Where a power to dispose of real property is confined to a disposition by devise or will, the instrument must be a written will, executed as required by law.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 147; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 115.

A power of appointment to be executed by will is in its nature ambulatory and its exercise is intended to represent the final judgment of the donee. Such a power may not be exercised by grant nor can it be executed by force of a contract to make a will; hence such a contract controlling the exercise of the power is not enforceable in equity. *Farmers' Loan & Trust Co. v. Mortimer* (1916), 219 N. Y. 290, 114 N. E. 389.

When will gives effect to power received in a deed.—It is absolutely necessary that a will should be executed and admitted to probate in order to give effect to a power reserved in a deed. *In re Johnson's Estate* (1892), 1 Pow. 68, 19 N. Y. Supp. 963. See also *Am. H. M. Soc. v. Wadhams* (1851), 10 Barb. 597, 607, revd. (1855), 12 N. Y. 415.

After-acquired real estate does not pass by will, and is not subject to a power of sale for the payment of legacies. *Lynes v. Townsend* (1865), 33 N. Y. 558.

§ 168. **Execution of power to dispose by grant.**—Where a power is confined to a disposition by grant, it can not be executed by will, although the disposition is not intended to take effect until after the death of the person executing the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 148; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 116.

See *Coleman v. Beach* (1885), 97 N. Y. 545, 556.

§ 169. **When direction by grantor does not render power void.**—Where the grantor of a power has directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the provisions of this article.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 149; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 118.

Power of disposal by will; when included in general power.—A general power to dispose of property includes the right to dispose of it by will, unless the grant of the power contains words which expressly, or by fair implication, exclude such a method of disposition. *Matter of Gardner* (1893), 140 N. Y. 122, 35 N. E. 439.

§ 170. When directions by grantor need not be followed.—Where the grantor of a power has directed any formality to be observed in its execution, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formality is not necessary to the valid execution of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 150; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 119.

§ 171. Nominal conditions may be disregarded.—Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 151; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 120.

Execution of power.—Mere formalities prescribed by the grantor as to the manner of executing a power, may be dispensed with, but essential conditions cannot. *Kissam v. Dierkes* (1872), 49 N. Y. 602, 604. See also *Macy v. Sawyer* (1883), 66 How. Pr. 381; *Falle v. Crawford* (1898), 30 App. Div. 536, 52 N. Y. Supp. 353; *Hillen v. Iselin* (1895), 144 N. Y. 365, 39 N. E. 368.

Thus, where the whole scheme of a will would fail in the absence of power in executors to sell, a clause to the effect that “during the lifetime of my said husband, my said executors, and such and whichever of them as shall act, are authorized and empowered, by and with the consent of my said husband, to sell and dispose of any part of my estate, real and personal, not specifically bequeathed,” was held to confer upon the executors a power of sale extending beyond the life of the husband, and during his life to be exercised by his consent, and thereafter continuing to exist. *Phillips v. Davies* (1883), 92 N. Y. 199.

Effect of invalid trusts.—A power to sell real estate, not being connected with attempted trusts, may be exercised though the trusts are void. *Lindo v. Murray* (1895), 91 Hun 335, 36 N. Y. Supp. 231, *affd.* (1898), 157 N. Y. 697, 51 N. E. 1091.

§ 172. Intent of grantor to be observed.—Except as provided in this article, the intentions of the grantor of a power as to the manner, time and conditions of its execution must be observed; subject to the power of the supreme court to supply a defective execution as provided in this article.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 152; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 121.

Due execution of power.—It is the general rule that to the due execution of a power, there must be a substantial compliance with every condition required to precede or accompany its exercise. *Allen v. De Witt* (1850), 3 N. Y. 276.

§ 173. Consent of grantor or third person to execution of power.—Where the consent of the grantor or a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or in a written certificate. In the first case, the instrument of execution, in the second, the certificate, must be subscribed by the person whose consent is necessary; and to entitle the in-

strument to be recorded, such signature must be acknowledged or proved and certified in like manner as a deed to be recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 153; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 122.

Revisers' note.—Unchanged in substance. See *Kissam v. Dierkes* (1872), 49 N. Y. 602, in which Judge Rapallo says: "Whether one of the grantors of the power would come under the designation of a third party as used in this section, is not very material to the present case, though we think that the correct construction of the section would require an affirmative answer to that question if it arose."

Consolidators' note.—As § 173 now stands, it literally requires that the consent of grantor or of a third person be a part of the instrument execution the power. Yet conveyancers commonly are of the opinion that a written consent contained in a separate instrument, if such consent is proved or acknowledged, satisfies the statute. There are no reported cases bearing expressly on this point. But as conveyancers in the city of New York customarily adopt the view denoted, it should be made clear by statute. It is sometimes extremely inconvenient to send a deed in execution of a power to Europe, or elsewhere, in order to have this consent of third persons indorsed thereon. There seems to be no good reason why the consent of third persons to the execution of a power should not be contained in a separate instrument in writing, if such instrument is duly proved or acknowledged. The other course now prescribed by the statute is very inconvenient and its necessity is actually ignored in practice by many conveyancers. This is one of the rare cases where the original provisions of the Revised Statutes relating to real property seem susceptible of improvement.

Application.—This section relates merely to the execution of a power and not to its creation. *Kissam v. Dierkes* (1872), 49 N. Y. 602.

Consent an essential condition.—A condition attached to a power of sale contained in a trust deed, that the trustee shall only sell by and with the consent of the grantor, to be manifested by his uniting in the conveyance, is an essential condition and cannot be dispensed with. *Kissam v. Dierkes* (1872), 49 N. Y. 602; *Stokes v. Hyde* (1897), 144 App. Div. 530, 533, 44 N. Y. Supp. 132. Thus, a deed is invalid where it has been executed without the consent required by this section. *Gardner v. Dembinsky* (1900), 52 App. Div. 473, 65 N. Y. Supp. 183, *affd.* (1902), 170 N. Y. 593, 63 N. E. 1117; *Des Caso v. Stiles* (1914), 161 App. Div. 871, 147 N. Y. Supp. 9.

§ 174. When all must consent.—Where the consent of two or more persons to the execution of a power is requisite, all must consent thereto; but if, before its execution one or more of them die, the consent of the survivor or survivors is sufficient, unless otherwise prescribed by the terms of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 154.

Revisers' note.—The last clause of this section is not now the law. See *Barber v. Carey* (1854), 11 N. Y. 397. But it seems to be just and corresponds to the provisions of § 146 (now 166).

Section is not retroactive.—*Gulick v. Griswold* (1899), 160 N. Y. 399, 54 N. E. 780, *affg.* (1897), 14 App. Div. 85, 43 N. Y. Supp. 443; *Wells v. Brooklyn Union Elevated R. R. Co.* (1907), 121 App. Div. 491, 106 N. Y. Supp. 77, *affd.* (1908), 193 N. Y. 641, 86 N. E. 1134.

At common law and prior to 1896 it was held that where a power was to be executed by the consent of third persons, the death of such persons before con-

sent given rendered the execution of the power impossible. *Barber v. Carey* (1854), 11 N. Y. 397.

Sole trustee as sole beneficiary.—Where a sole surviving trustee is the sole beneficiary of the estate for a period of years there is nothing which prevents him from exercising a power of sale given him by the will that is inconsistent with his acts as trustee for the ultimate beneficiaries. *Weeks v. Frankel* (1910), 197 N. Y. 304, 90 N. E. 969, revg. (1908), 128 App. Div. 223, 112 N. Y. Supp. 562.

§ 175. **Omission to recite power.**—An instrument executed by the grantee of a power, conveying an estate or creating a charge, which he would have no right to convey or create, except by virtue of the power, shall be deemed a valid execution of the power, although the power be not recited or referred to therein.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 155; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 124.

Purpose and application of section.—This section seems to have been adopted for the purpose of combining in the statutory regulations regarding powers desirable and necessary existing rules, in respect to the subject. It was not intended to change the existing rules; and whenever in addition to the power the grantee has an independent interest in the property, whether legal or equitable, the statute does not apply and the instrument will not be deemed an execution of the power, but only a conveyance of the independent interest. *Mutual Life Ins. Co. of N. Y. v. Shipman* (1890), 119 N. Y. 324, 329, 24 N. E. 177. In the above case it was held that a mortgagor in possession of land under a consummate right of dower was a person having independent rights and interests in the property mortgaged in addition to a testamentary power.

The above section relates only to cases where the grantee executes the instrument; it nowhere refers to the source from which he claims to derive the authority so to do. Thus, where a person expressly states in an instrument that he proposes to execute a certain power which he believes to have been given him, and has no intention of executing another power which he does not believe he possesses, the statute will not hold the instrument executed to be an exercise of the power which the maker of the instrument did not believe he possessed, and had no intention of exercising, as is shown by the instrument itself. *Pollock v. Hooley* (1893), 67 Hun 370, 374, 22 N. Y. Supp. 215.

This section is a rule of construction and does not apply where the donee of the power has also an individual property right or estate in the property. Whether a disposition of real property is in execution of a power conferred by a last will is always a question of intention; and the deed must be so construed as to effectuate the intent of the parties, unless inconsistent with settled rules of law or property. Where testator by his will, containing no provision in lieu of dower, gave all of his estate both real and personal to his widow "in trust to have and to hold, with full power to sell and convey any or all of said property, both real and personal, and from the income and proceeds thereof to support and maintain during her life herself and our daughter," and during the lifetime of the daughter the widow, individually and as executrix, made a conveyance of a part of the real estate by a deed in the usual form to convey a title in fee simple, and for more than twelve years no demand was made upon the grantee, and neither the trustee nor the beneficiaries of the trust had the use or benefit of the real estate so conveyed, it is clear that the grantor intended to convey the premises in fee simple under the power. *Pepper v. Cutler* (1912), 78 Misc. 532, 139 N. Y. Supp. 976.

Necessity of referring to power in execution of deed.—It is unnecessary to refer to the power, if an intention to execute it plainly appears. Thus, an appoint-

ment by will without reference to the power may be shown to have been made in execution of it. *White v. Hicks* (1865), 33 N. Y. 383, 392. And a conveyance by an executor, without reciting his power of sale, will convey the fee. *Forster v. Winfield* (1893), 3 Misc. 435, 327, 23 N. Y. Supp. 169, revd. (1894), 142 N. Y. 327, 37 N. E. 111.

A bequest or devise of all the residue will carry property subject to a power. *Hogle v. Hogle* (1888), 49 Hun 313, 2 N. Y. Supp. 172.

Where a trust deed which gives the trustee, who had no interest in the premises described therein, except such as he derived under the trust deed, power to sell the premises, a conveyance of the trust properly executed by the trustee as such will, under the provisions of this section, be deemed a valid execution of the power, although the power be not recited or referred to therein. *Exchange Sav. Bank v. Brass* (1901), 59 App. Div. 370, 69 N. Y. Supp. 391, affd. (1902), 171 N. Y. 693, 64 N. E. 1118.

Although a deed by one holding a power is presumed to be made in the exercise of that power, though not referred to, yet when the power is coupled with an interest, legal or equitable, the presumption is that a deed not referring to the power conveys the interest only. *Merolla v. Lane* (1907), 122 App. Div. 535, 541, 107 N. Y. Supp. 439.

§ 176. When devise operates as an execution of the power.—Real property embraced in a power to devise passes by a will purporting to convey all the real property of the testator, unless the intent that the will is not to operate as an execution of the power, appears, either expressly or by necessary implication.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 156; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 126.

At common law it was held that whether a particular disposition should be treated as an execution of a power was a question of intention, and that the several provisions of a will should be carefully considered for the purpose of ascertaining whether the party really meant to execute the power or not. This rule has been changed by the above section. *Lockwood v. Mildeberger* (1899), 159 N. Y. 181, 185, 53 N. E. 803, revg. (1896), 5 App. Div. 459, 38 N. Y. Supp. 1107; *Matter of Piffard* (1886), 42 Hun 34, 37, affd. (1888), 111 N. Y. 410, 18 N. E. 718, 2 L. R. A. 193.

Application of section.—Under this section the testatrix need not make special mention of the property which she has received under her husband's will in contradistinction to the property which she held as a separate estate at the time of her husband's death. *Kibler v. Miller* (1890), 57 Hun 14, 17, 10 N. Y. Supp. 375, affd. (1894), 141 N. Y. 571, 36 N. E. 345. The general language of the will of a widow held adequate as an execution of the disposition conferred upon her by her husband's will. *Thomas v. Snyder* (1887), 43 Hun 14. In *Mott v. Ackerman* (1883), 92 N. Y. 549, it was held that general words of gift in a will are sufficient to convey all the property and rights capable to be disposed of.

When a will disposes of all the testator's own property an intent not to execute a power of appointment conferred by will is not to be inferred from the fact that it makes no reference to the primary will or to the power of appointment therein conferred. *Lockwood v. Mildeberger* (1899), 159 N. Y. 181, 53 N. E. 803.

"Necessary implication" results only where the will permits of no other interpretation. *Lockwood v. Mildeberger* (1899), 159 N. Y. 181, 186, 53 N. E. 803, revg. (1896), 5 App. Div. 459, 38 N. Y. Supp. 1107.

Application to personal property.—This section applies to personal property. *Hutton v. Benkard* (1883), 92 N. Y. 295; *N. Y. Life Ins. Co. v. Livingston* (1892),

L. 1909, ch. 52.

Powers.

§§ 177, 178.

133 N. Y. 125, 30 N. E. 724; *Bolton v. De Peyster* (1857), 25 Barb. 539, 564; *Matter of Piffard* (1886), 42 Hun 34, 37, *affd.* (1888), 111 N. Y. 410, 18 N. E. 718, 2 L. R. A. 193.

An instrument executing a testamentary power need not refer to the source from which the power is derived, and said rule applies as well to wills of personality as to wills of real estate. *McLean v. McLean* (1916), 174 App. Div. 152, 160 N. Y. Supp. 949.

Donee of power may give life estate rather than whole fee.—An appointment under a testamentary power will not fail merely because it does not go to the full extent of the power conferred; thus the donee of the power may give a life estate rather than the whole fee. *McLean v. McLean* (1916), 174 App. Div. 152, 160 N. Y. Supp. 949.

§ 177. **Disposition not void because too extensive.**—A disposition or charge by virtue of a power is not void on the ground that it is more extensive than was authorized by the power; but an estate or interest so created, so far as embraced by the terms of the power, is valid.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 157; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 123.

Elimination of excessive provisions.—The execution of the power will not be defeated because of some provision in excess of the power which may be eliminated without disturbing the general scheme. *Hillen v. Iselin* (1895), 144 N. Y. 365, 380, 39 N. E. 368. See also *Root v. Stuyvesant* (1837), 18 Wend. 257, 274; *Austin v. Oakes* (1888), 48 Hun 492, 1 N. Y. Supp. 307, *modfg.* (1890), 117 N. Y. 577, 23 N. E. 193.

§ 178. **Computation of term of suspension.**—The period during which the absolute right of alienation may be suspended, by an instrument in execution of a power, must be computed, not from the date of such instrument, but from the time of the creation of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 158; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 128.

Reference.—As to suspension of power of alienation generally, Real Property Law, § 42.

Application.—This section recognizes the rule that the power of alienation may be suspended in reference to a trust estate by an instrument in execution of a power. *Maitland v. Baldwin* (1893), 70 Hun 267, 24 N. Y. Supp. 29.

Computation of period of suspension.—Where in the execution of a will a power was created by a deed, the computation of the time within which the right of alienation may be suspended should be determined from the date of the deed. *Dana v. Murray* (1890), 122 N. Y. 604, 616, 26 N. E. 21. The period during which the power of alienation may be suspended by an instrument in execution of the power is to be computed from the time of the creation of the "power." *Everitt v. Everitt* (1864), 29 N. Y. 39, 78; *Booth v. Baptist Church* (1891), 126 N. Y. 215, 28 N. E. 238; *Belmont v. O'Brien* (1855), 12 N. Y. 394, 403.

The doctrine that a deed executing a power refers back to the instrument creating the power so that the party is deemed to take under the deed from the grantor by whom the power was created and not from the power, is a fiction of law for the advancement of right and is not to be applied to the injury of a stranger. *Jackson ex dem. Henderson v. Davenport* (1822), 20 Johns. 537, 551.

In determining the question of the suspension of the power of alienation, the will creating the power of appointment and the instrument attempting to exercise it must be read together as if constituting a single disposition. *Farmers' Loan & Trust Co. v. Kip* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092, *affd.*

(1908), 192 N. Y. 266, 85 N. E. 59; *Fargo v. Squires* (1897), 154 N. Y. 250, 48 N. E. 509; *Matter of Pillsbury* (1906), 50 Misc. 367, 99 N. Y. Supp. 62, *affd.* (1906), 113 App. Div. 893, 99 N. Y. Supp. 62, *affd.* (1906), 186 N. Y. 545, 79 N. E. 1114.

The principle that the validity of a limitation is to be tested by what is possible, and not by what in fact happens, has no application in the construction of a power to limit estates couched in general terms, without negative or restrictive words. It applies to estates actually limited under a will, deed or power, and a general and unlimited power of appointment to be exercised in the future is not void, because under it the donee might, without departing from the express language, attempt to create an illegal estate. *Hillen v. Iselin* (1895), 144 N. Y. 365, 380, 39 N. E. 368.

See generally, *Farmers' Loan & Trust Co. v. Shaw*, 56 Misc. 201, 107 N. Y. Supp. 337; *affd.* (1908), 127 App. Div. 656, 661, (1908), 111 N. Y. Supp. 1118; *Root v. Stuyvesant* (1837), 18 Wend. 257, 278; *Beardsley v. Hotchkiss* (1884), 96 N. Y. 201, 214, *modfg.* (1883), 30 Hun 605, 619; *Genet v. Hunt* (1889), 113 N. Y. 158, 21 N. E. 91; *Blanchard v. Blanchard* (1875), 4 Hun 287, *affd.* (1877), 70 N. Y. 615; *Fargo v. Squires* (1896), 6 App. Div. 485*ff* 489, 39 N. Y. Supp. 648, *modfg.* (1897), 154 N. Y. 250, 48 N. E. 509.

§ 179. Capacity to take under a power.—An estate or interest can not be given or limited to any person, by an instrument in execution of a power, unless it would have been valid, if given or limited at the time of the creation of the power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 159; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 129.

Revisers' note.—Unchanged in substance, but with some change of language to remove the difficulty of construction suggested in *Dempsey v. Tylee* (1854), 10 N. Y. Super. (3 Duer.) 73, 98, 101, 102. Compare *Hoe v. Kenny* (1857), 25 Barb. 396.

Interest and title of appointee.—Where the donee of the power has the right of selection, the interest appointed vests in the appointee at the time of the appointment, but his title relates to and is acquired under the instrument creating the power. *Matter of Stewart* (1892), 131 N. Y. 274, 281, 30 N. E. 184, 14 L. R. A. 836.

See generally, *Farmers' Loan & Trust Co. v. Kip* (1907), 120 App. Div. 347, 104 N. Y. Supp. 1092, *affd.* (1908), 192 N. Y. 266, 85 N. E. 59; *Root v. Stuyvesant* (1837), 18 Wend. 257, 278; *Salmon v. Stuyvesant* (1836), 16 Wend. 321, 324.

§ 180. Purchaser under defective execution.—A purchaser for a valuable consideration, claiming under a defective execution of a power, is entitled to the same relief as a similar purchaser, claiming under a defective conveyance from an actual owner.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 160; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 132.

Consolidators' note.—The change of word "Purchase" to "Purchaser" in synopsis of section is to correct an obvious error in the original act.

Relief of purchasers in good faith under a defectively executed power. See *Correll v. Lauterbach* (1895), 14 Misc. 469, 473, 36 N. Y. Supp. 615; *Barber v. Carey* (1854), 11 N. Y. 397.

§ 181. Instrument affected by fraud.—An instrument in execution of a power is affected by fraud, in the same manner as a conveyance or will, executed by an owner or by a trustee.

L. 1909, ch. 52.

Dower.

§§ 182, 190.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 161; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 125.

Fraudulent acts of trustee or donee of power; effect of.—The rule is inflexible that a trustee or a donee of a power in trust cannot trade and bargain with a beneficiary with a view of deriving any advantage to himself by the transaction. *Post v. Benchley* (1880), 48 Hun 83, 90.

The fraudulent exercise of a power of sale is void. *Harty v. Doyle* (1888), 49 Hun 410, 3 N. Y. Supp. 574. And an executor who under a power contained in a will makes a collusive sale of real estate, may properly be charged with any loss resulting to the estate. *Matter of Vandevort* (1896), 8 App. Div. 341, 40 N. Y. Supp. 791.

§ 182. **Sections applicable to trust powers.**—Sections one hundred and eleven to one hundred and thirteen of this chapter, both inclusive, in relation to express trust estates, and the trustee thereof, apply equally to trust powers, however created, and to the grantees of such powers.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 162; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 102.

Consolidators' note.—For the reasons assigned in note to § 112, the following is suggested for insertion at the close of § 182:

"Excepting that no surrogate shall have authority, power, or jurisdiction to appoint, or designate, a person to execute a power in trust, conferred by deed."

See generally, *Delaney v. McCormack* (1882), 88 N. Y. 174, 182; *Matter of Clark* (1891), 62 Hun 275, 283, 17 N. Y. Supp. 93; *Cooke v. Platt* (1885), 98 N. Y. 35, 39; *Wright v. Delafield* (1857), 23 Barb. 498, 517, revd. (1862), 25 N. Y. 266; *Quin v. Skinner* (1867), 49 Barb. 128, 133; *Leggett v. Hunter* (1857), 25 Barb. 81, 100, *affd.* (1859), 19 N. Y. 445.

ARTICLE VI.

DOWER.

Section 190. Dower.

191. Dower in lands exchanged.
192. Dower in lands mortgaged before marriage.
193. Dower in lands mortgaged for purchase-money.
194. Surplus proceeds of sale under purchase-money mortgages.
195. Widow of mortgagee not endowed.
196. When dower barred by misconduct.
197. When dower barred by jointure.
198. When dower barred by pecuniary provisions.
199. When widow to elect between jointure and dower.
200. Election between devise and dower.
201. When deemed to have elected.
202. When provision in lieu of dower is forfeited.
203. Effect of acts of husband.
204. Widow's quarantine.
205. Widow may bequeath a crop.
206. Divorced woman may release dower.
207. Married woman may release dower by attorney.

§ 190. **Dower.**—A widow shall be endowed of the third part of all the

lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 170; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 1.

References.—Action for dower and admeasurement, Code Civ. Pro. §§ 1596–1625. Dower after divorce, Id. § 1759, subd. 4. Dower barred by foreclosure of mortgage, Id. § 2395, subd. 5. Sale of dower interest in action for partition, Id. §§ 1567, 1568. Protection of dower interest or payment of gross sum in such an action, Id. §§ 1569, 1570. Married woman may release dower interest to husband where property is sold on partition, Id. § 1571. Sale of dower right of infant, lunatic, etc., Id. §§ 2350, 2363. Dower not to be affected by statute as to descent of real property. Decedent estate Law, § 80, sub. 4.

Essentials of dower are marriage, seizin, and the husband's death. *Wait v. Wait* (1850), 4 N. Y. 95, 99.

Seizin of husband.—To entitle the wife to dower the husband must be seized either in fact or in law of a present freehold in the premises as well as of an estate of inheritance. Seizin cannot be predicated with respect to lands purchased with the moneys of the husband, but not conveyed or agreed to be conveyed to him. *Phelps v. Phelps* (1894), 143 N. Y. 197, 38 N. E. 280, 25 L. R. A. 625.

The husband must have been seized either in fact or in law of an estate of inheritance in the land at some time during the coverture. This rule is inflexible. *Durando v. Durando* (1861), 23 N. Y. 331. Seizin must be legal and not a mere equitable right to or interest in lands. *Coster v. Clarke* (1840), 3 Edw. Ch. 428, 436.

Where it does not appear from the pleadings in an action for dower that there was any trust in the lands in favor of plaintiff's deceased husband, and it is clear that he had neither the actual seizin of the property nor a legal right to actual seizin during coverture, a motion for judgment on the pleadings made by defendant must be granted. *Purdy v. Purdy* (1916), 95 Misc. 369, 158 N. Y. Supp. 683.

Possession of lands.—Title vested in the husband will constitute seizin within the meaning of this statute, and a widow in order to maintain an action to recover dower in certain property need not prove that her husband was in actual possession of such property. *McIntyre v. Costello* (1888), 47 Hun 289. See also *Poor v. Horton* (1853), 15 Barb. 485.

Possession of land, by the husband, claiming ownership, is *prima facie* evidence of seizin to entitle his widow to dower. *Jackson v. Waltermire* (1827), 7 Cow. 353; *Embree v. Ellis* (1807), 2 Johns. 119.

An "estate of inheritance" in which a wife will take dower under the statute includes any equitable interest owned by the husband which is not extinguished by his death. Seizin in fact in the husband is unnecessary; seizin in law, which is the right to immediate possession, is sufficient. *Lugar v. Lugar* (1914), 160 App. Div. 807, 146 N. Y. Supp. 37.

Specific property or interests subject to dower.—Dower may be acquired in a pier. *Bedlow v. Stillwell* (1895), 91 Hun 384, 36 N. Y. Supp. 129, *affd.* (1899), 158 N. Y. 292, 53 N. E. 26. Mines opened and worked during coverture are subject to dower, but not mines unopened at the death of the husband. *Coates v. Cheever* (1823), 1 Cow. 460.

Surplus moneys arising from mortgage or sale of property are subject to dower. *Denton v. Nanny* (1856), 8 Barb. 618; *Vartie v. Underwood* (1854), 18 Barb. 561.

The wife's dower may attach to the husband's interest in lands, the title being held by a third person who gave the husband a writing defining his interests. *Matter of McKay* (1893), 5 Misc. 123, 25 N. Y. Supp. 725.

The right and privilege to use surplus water of Erie Canal, is not subject to dower. *Kingman v. Sparrow* (1851), 12 Barb. 201, 207.

Seizin of a vested remainder cannot be sufficient to give dower. *Clark v. Clark* (1895), 84 Hun 362, 32 N. Y. Supp. 325. Unless the remainderman purchase the life estate upon which his remainder is limited. *House v. Jackson* (1872), 50 N. Y. 161; *Durando v. Durando* (1861), 23 N. Y. 331; *Dunham v. Osborn* (1829), 1 Paige 634; *Green v. Putnam* (1847), 1 Barb. 500, 506.

A mere trust estate of the husband is not subject to dower. *Cooper v. Whitney* (1842), 3 Hill 95; *Terrett v. Crombie* (1872), 6 Lans. 82, 88, mod. (1874), 55 N. Y. 683; *Gomez v. Tradesmen's Bank* (1850), 6 N. Y. Super. (4 Sandf.) 102; *Coaster v. Clarke* (1840), 3 Edw. Ch. 428, 436; *Hicks v. Stebbins* (1870), 3 Lans. 39.

The wife has no right to dower in a determinable estate of her husband if such estate be terminated before his death. *Weller v. Weller*, 28 Barb. 538 (1858); *Moriata v. McRea* (1887), 45 Hun 564, *affd.* (1890), 120 N. Y. 659, 24 N. E. 1103. A wife's right of dower in an estate of her husband upon condition is defeated by the failure of the husband's title through his nonperformance of the condition. *Greene v. Reynolds* (1893), 72 Hun 565, 25 N. Y. Supp. 625. See also *Beardslee v. Beardslee* (1849), 5 Barb. 324.

Where by the will of his grandfather decedent was devised certain property "during his natural life with the right and power to dispose of by will," and by a codicil the property was devised to decedent's heirs-at-law in case he did not dispose of it by will, and by a further codicil other property was added subject to the same conditions in every respect mentioned in the will and first codicil, and decedent by will devises the property, his widow is not entitled to dower in the estate so devised to him by his grandfather. *Barr v. Howell* (1914), 85 Misc. 330, 147 N. Y. Supp. 483.

Partnership real estate while its affairs are unsettled is not subject to dower. *Riddell v. Riddell* (1895), 85 Hun 482, 33 N. Y. Supp. 99.

Lands held under contract of purchase are not subject to dower. *Hicks v. Stebbins* (1870), 3 Lans. 39.

Dower cannot be recovered upon dower.—*Elwood v. Klock* (1852), 13 Barb. 50, 55. Thus, where lands *descend* to the son on the death of the father and dower is assigned to the mother, if the son dies during the life of the mother, his widow can only be endowed of the remaining two-thirds. *Safford v. Safford* (1838), 7 Paige 359. But if the lands are *conveyed* to the son by the father, the widow of the son will be entitled to dower in the other third after the death of the mother. *Dunham v. Osborn* (1829), 1 Paige 634; *Elwood v. Klock* (1852), 13 Barb. 50, 55.

Favored in law.—Dower is one of the estates most favored by the law and the tendency of the decisions has always been to preserve it for the wife, if this may be done. *N. Y. Life Ins. Co. v. Mayer* (1887), 14 Daly 318, 12 N. Y. St. Rep. 119, 121, *affd.* (1888), 108 N. Y. 655, 15 N. E. 444; *Denton v. Nanny* (1850), 8 Barb. 618, 621; *Harrison v. Peck* (1870), 56 Barb. 251, 264; *Fern v. Osterhout* (1896), 11 App. Div. 319, 42 N. Y. Supp. 450; *Emigrant Industrial Bank v. Regan* (1899), 41 App. Div. 523, 529, 58 N. Y. Supp. 693.

Inchoate right of dower is not an estate or interest in lands at all, but is a contingent claim arising not out of contract, but as an institution of law, constituting a mere chose in action incapable of transfer by grant or conveyance, but susceptible of extinguishment only during its inchoate state. *Witthaus v. Schack* (1887), 105 N. Y. 332, 336, 11 N. E. 649; *Green v. Putnam* (1847), 1 Barb. 500, 506; *Elwood v. Klock* (1852), 13 Barb. 50, 56; *Scott v. Howard* (1848), 3 Barb. 319, 321. The widow has no estate, but a mere right of action, or claim, which cannot be sold on execution. *Laurence v. Miller* (1849), 2 N. Y. 245, 254; *Aikman v. Harsell* (1885), 98 N. Y. 186, 191.

But such claim has been held to be an interest in lands within the meaning of the Statute of Frauds. *Mut. Life Ins. Co. v. Shipman* (1890), 119 N. Y. 324, 24 N. E. 177.

The wife's inchoate right of dower vests at the moment of the grant to her husband, and she takes it constructively as purchaser from the grantor. *Kursheedt v. Union Dime Sav. Institution* (1890), 118 N. Y. 358, 23 N. E. 473, 7 L. R. A. 229. It is superior to the lien of a mortgage given by her husband, the husband falsely representing that he was unmarried. *Westfall v. Hintze* (1878), 7 Abb. N. C. 236.

Release of inchoate right of dower.—An inchoate right of dower may be released to the grantee of the husband, by a proper conveyance executed and acknowledged in the form prescribed by statute, but the right cannot be transferred to a stranger, or to one with whom the wife does not sustain any privity. *Marvin v. Smith* (1871), 46 N. Y. 571, 574; *Mutual Life Ins. v. Shipman* (1890), 119 N. Y. 324, 333, 24 N. E. 177, revg. (1889), 50 Hun 578, 3 N. Y. Supp. 684. But the wife may not convey or release her inchoate right of dower directly to her husband. *N. Y. Life Ins. Co. v. Mayer* (1887), 14 Daly 318, 12 N. Y. St. Rep. 119, 121, affd. (1888), 108 N. Y. 655, 15 N. E. 444.

A wife does not release or convey her inchoate right of dower in surplus moneys by joining in a mortgage containing a clause stipulating that the surplus, if any, shall be paid to the husband or those claiming under him. *New York Life Ins. Co. v. Mayer* (1887), 14 Daly 318, 12 N. Y. St. Rep. 119, affd. (1888), 108 N. Y. 655, 15 N. E. 444. See also *Vartie v. Underwood* (1854), 18 Barb. 561.

The wife's inchoate right of dower is not lost where the husband conveys lands to a third party and such third party subsequently transfers the same lands to the wife. *Huff v. Wheeler* (1899), 27 Misc. 763, 59 N. Y. Supp. 716.

Partition at law where the wife is not a party and in which she does not join will not bar her right to dower. *Van Gelder v. Post* (1836), 2 Edw. Ch. 577.

The wife's inchoate right to dower may be divested where the lands of her husband are taken for public use under the power of eminent domain. *Moore v. City of N. Y.* (1853), 8 N. Y. 110.

An infant married woman cannot bind herself by deed so as to bar her right of dower. *Cunningham v. Knight* (1847), 1 Barb. 399.

Action for protection of inchoate right of dower.—The inchoate right of dower is a valuable, subsisting, separate and distinct interest which is entitled to protection and for which the wife may maintain a separate action. Thus, it has been held that she may maintain an action to cancel a deed of record on the ground that so far as the deed purports to be signed by her it is a forgery. *Clifford v. Kampfe* (1895), 147 N. Y. 383, 386, 42 N. E. 1. Or for fraud for the loss of her inchoate right of dower against a grantee who induced her to join in a conveyance of her husband's property. *Simar v. Canaday* (1873), 53 N. Y. 298. Or to redeem mortgaged premises from a foreclosure sale where she was not personally served. *Taggart v. Rogers* (1888), 49 Hun 265, 1 N. Y. Supp. 900, revd. on rearg. (1889), 1 Silv. 416, 5 N. Y. Supp. 255; *Campbell v. Ellwanger* (1894), 81 Hun 259, 30 N. Y. Supp. 792. Or to obtain relief from fraudulent conveyances on the eve of marriage. *Babcock v. Babcock* (1876), 53 How. Pr. 97.

In proceedings for the condemnation of property under the right of eminent domain, the inchoate right of dower of a wife in the proceeds is to be recognized and protected as against her husband. *Matter of Brooklyn Bridge* (1894), 75 Hun 558, 27 N. Y. Supp. 597, affd. (1894), 143 N. Y. 640, 37 N. E. 823.

Assignment of dower to widow.—A dower right, although not admeasured, is assignable. *Pope v. Mead* (1885), 99 N. Y. 201, 1 N. E. 671. See also *Mut. Life Ins. Co. v. Shipman* (1890), 119 N. Y. 324, 1 N. E. 887. And an assignment of dower

other than by a proceeding under the statute becomes valid and obligatory upon the heirs by the widow's entry upon the lands assigned and by the adoption and ratification on their part of the assignment. *Gibbs v. Esty* (1880), 22 Hun 266.

A widow is entitled to dower in land conveyed by her husband according to its value at the time of alienation. *Walker v. Schuyler* (1833), 10 Wend. 480; *Van Gelder v. Post* (1836), 2 Edw. Ch. 577, 579; *Brown v. Brown* (1866), 31 How. 481, 500; *Hale v. James* (1822) 6 Johns. Ch. 258; *Shaw v. White* (1816), 13 Johns. 179. She is entitled to crops growing on the land assigned to her for dower. *Clark v. Battorf* (1873), 1 T. & C. 58. But her claim is subject to liens upon the property at the time when the husband became seized thereof. *Clark v. Clark* (1895), 84 Hun 362, 32 N. Y. Supp. 325; *Scott v. Howard* (1848), 3 Barb. 319, 321.

Dower may be held to attach to the rents and profits where it cannot be assigned by metes and bounds. *Van Gelder v. Post* (1836), 2 Edw. Ch. 577, 579.

Dower must be computed upon the value of lands at the date of the husband's death or his alienation of the property. The widow does not share in the value of improvements thereafter made. *Emrich v. Emrich* (1908), 129 App. Div. 557, 113 N. Y. Supp. 1052.

Dower subject to widow's debts after the decease of her husband, although unadmeasured. *Payne v. Becker* (1881), 87 N. Y. 153.

Effect of oral agreement by husband to give "a proper and sufficient mortgage" for moneys advanced; specific performance.—An oral agreement by a husband, to which his wife is not a party, to give "a proper and sufficient mortgage" upon property in which he owns a half interest to secure the payment of moneys advanced for the payment of taxes, water charges, insurance, etc., has no effect upon the wife's dower rights, nor upon the interest of a son, in the property which passed to his mother upon his death. As the agreement to give a mortgage did not state what its terms and conditions were to be, it cannot be enforced by specific performance. *Meixel v. Meixel* (1914), 161 App. Div. 518, 146 N. Y. Supp. 587.

In an action by a widow to recover dower against a grantee from her husband, the defendant is not estopped from showing the quantity of interest which the husband had in the property conveyed. *Finn v. Sleight* (1850), 8 Barb. 401; *Cooper v. Whitney* (1842), 3 Hill 95; *Kingman v. Sparrow* (1851), 12 Barb. 201, 209. Sufficiency of land remaining of the husband's estate to satisfy all claim of dower is no answer to an action for dower out of the land of the husband's alienee. *Richardson v. Harns* (1895), 11 Misc. 254, 32 N. Y. Supp. 808.

Where a conveyance by a husband is set aside because it was fraudulent as to his creditors, the dower interest of his wife which was cut off by her uniting in the fraudulent deed, is restored to her, and after the death of her husband, she may recover her dower in the premises. *Wilkinson v. Paddock* (1890), 57 Hun 191, 11 N. Y. Supp. 442, *affd.* (1891), 125 N. Y. 748, 27 N. E. 407. But see *Manhattan Co. v. Evertson* (1837), 6 Palge 457.

Revival of action after widow's death.—The agreement of the wife to accept a gross sum in lieu of dower does not give her such a vested right in the same as to entitle her representatives to revive the action after her death. *McKeen v. Fish* (1884), 33 Hun 28, *affd.* (1885), 98 N. Y. 645.

Evidence of marriage in an action for dower, see *Van Gelder v. Post* (1836), 2 Edw. Ch. 577.

Costs.—A widow is entitled to costs in an action of ejectment brought to recover her dower. *Walker v. Schuyler* (1833), 10 Wend. 481.

Alien widow of citizen had no dower right under earlier statutes. *Connolly v. Smith* (1839), 21 Wend. 59.

Payment of taxes.—A widow is under no obligation to pay taxes assessed against
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her husband's realty during his lifetime and before the assignment of dower. *Underground Electric Rys. Co. of London v. Owsley* (1912), 196 Fed. 278.

§ 191. **Dower in lands exchanged.**—If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 171; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 3.

“Exchange,” as used in this section, means a mutual grant of equal interests, the one in consideration of the other. *Wilcox v. Randall* (1850), 7 Barb. 633. See also *Runyan v. Stewart* (1850), 12 Barb. 537, 542.

§ 192. **Dower in lands mortgaged before marriage.**—Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 172; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 4.

Application.—This section is not applicable to a purchase-money mortgage. *Cunningham v. Knight* (1847), 1 Barb. 399.

Equity of redemption.—Widow entitled to dower in. *Denton v. Nanny* (1850), 8 Barb. 618; *Mills v. Van Voorhies* (1859), 20 N. Y. 412; *Simar v. Canaday* (1873), 53 N. Y. 298, 303; *Blydenburgh v. Northrop* (1856), 13 How. Pr. 289; *Bell v. Mayor* (1843), 10 Paige 49.

If the mortgagee or his assignee acquires possession of the premises under a mortgage, after forfeiture, the widow cannot recover her dower as to him, or any person claiming under him, but will be limited solely to a redemption of the mortgage. *Smith v. Gardner* (1864), 42 Barb. 356, 365. Where a tenant enters upon the land by virtue of a foreclosure, or after a forfeiture for the nonpayment of the money, then the estate is deemed never to have vested in the husband, and the widow is not entitled to dower. *Coates v. Cheever* (1823), 1 Cow. 460.

A suit in equity is the proper remedy of a widow to recover dower in an equity of redemption against the mortgagee or those claiming under him. *Van Dyne v. Thayer* (1838), 19 Wend. 162; *Denton v. Nanny* (1851), 8 Barb. 618, 621; *Cooper v. Whitney* (1842), 3 Hill 95, 96.

§ 193. **Dower in lands mortgaged for purchase-money.**—Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 173; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 5.

Construction.—See *Boles v. Benham* (1891), 127 N. Y. 620, 28 N. E. 657, 14 L. R. A. 55; *Sheldon v. Hoffnagle* (1889), 51 Hun 478, 4 N. Y. Supp. 287; *Taggart v. Rogers* (1888), 49 Hun 265, 1 N. Y. Supp. 900, revd. on rearg. (1889), 1 Silv. 416, 5 N. Y. Supp. 255; *Blyndenburgh v. Northrop* (1856), 13 How. Pr. 289, 295; *Taylor v. Post* (1883), 30 Hun 446.

The reason for the wife not being entitled to dower in lands mortgaged for purchase-money is that the husband has only an instantaneous seizin in such land. *Cunningham v. Knight* (1847), 1 Barb. 399; *Stow v. Tift* (1818), 15 Johns. 458.

Foreclosure of purchase-money mortgage; bar to wife's dower.—A statutory foreclosure and sale under a power of sale contained in a purchase-money mortgage bars the right of dower of the wife of the mortgagor, although she was not a party to the mortgage. *Brackett v. Baum* (1872), 50 N. Y. 8.

Where a wife joins with her husband in the mortgage of his lands and he dies after the sale and foreclosure, she will not be entitled to any dower out of any balance of the avails of the sale. *Frost v. Peacock* (1846), 4 Edw. Ch. 678.

A release or conveyance of the equity of redemption by the mortgagor in a purchase-money mortgage to the mortgagee, extinguishes the mortgage, and there never was an instant of time when the widow of the mortgagor was entitled to dower. *Jackson v. Dewitt* (1826), 6 Cow. 316.

Where A. bought land of B., and gave him a mortgage for the purchase-money; then conveyed the equity of redemption to C.; then C. entered and bought the mortgage of B.; held that A.'s widow was entitled to dower and that the mortgage was extinguished by the union of the legal and equitable estate in C. *Coates v. Cheever* (1823), 1 Cow. 460.

The lien of a purchase-money mortgage, as such, does not extend farther than to the specific property whose purchase price is secured by it. *Fern v. Osterhout* (1896), 11 App. Div. 319, 42 N. Y. Supp. 450; see *Dodge v. Manning* (1897), 19 App. Div. 29, 46 N. Y. Supp. 1049.

Where a wife joins her husband in a mortgage of his real estate, she is not entitled to have the mortgage satisfied out of the husband's interest in the premises exclusively, so as to give her dower in the whole premises, notwithstanding the mortgage. *Hawley v. Bradford* (1841), 9 Paige 200.

Widow's dower subject to equitable lien of vendor.—The widow of a purchaser takes her dower in the land subject to the equitable lien of the vendor for the unpaid purchase-money where such vendor has taken no mortgage or other security for the payment of the purchase-money. *Warner v. Van Alstyne* (1832), 3 Paige 513; *Williams v. Kinney* (1887), 43 Hun 1, 8, *affd.* (1890), 118 N. Y. 679, 23 N. E. 1147.

Right to rents and profits until foreclosure.—A wife joining with her husband in a mortgage for the security of his debt is, after his death, entitled to the rents and profits of her share or other interest in the premises until foreclosure. *Bank of Ogdensburg v. Arnold* (1835), 5 Paige 38.

The purchase by the husband of an outstanding purchase-money mortgage does not merge the equitable estate into a legal estate and the wife has no right of dower in the whole premises, although she was an infant when such mortgage was executed. *DeLisle v. Herbs* (1881), 25 Hun 485.

§ 194. Surplus proceeds of sale under purchase-money mortgages.—

Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any

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surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third of the surplus for her life, as her dower.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 174; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 6.

See *Brackett v. Baum* (1872), 50 N. Y. 8; *Denton v. Nanny* (1850), 8 Barb. 618; *Matthews v. Duryee* (1865), 45 Barb. 69, *affd.* (1866), 4 Keyes 525; *Blydenburgh v. Northrop* (1856), 13 How. Pr. 289.

§ 195. **Widow of mortgagee not endowed.**—A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 175; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 7.

§ 196. **When dower barred by misconduct.**—In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 176; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 8.

Reference.—Where marriage is dissolved for misconduct of wife, she is not entitled to dower, Code Civ. Pro. § 1760, subd. 3.

"Misconduct" refers to adultery, and not to any act which may be termed misconduct or converted into a cause of action by the legislature of another state. *Van Cleef v. Burns* (1890), 118 N. Y. 549, 23 N. E. 881; *Price v. Price* (1891), 124 N. Y. 589, 601, 27 N. E. 383, 12 L. R. A. 359.

A divorce dissolving the marriage contract on the ground of the adultery of the husband, does not deprive the wife of her right of dower in his real estate. *Wait v. Wait* (1850), 4 N. Y. 95.

The forfeiture of dower is not a consequence of the "misconduct," but of the judgment founded thereon. *Schiffer v. Pruden* (1876), 64 N. Y. 47; *Pitts v. Pitts* (1873), 52 N. Y. 593; *Forrest v. Forrest* (1859), 16 N. Y. Super. (3 Bosw.) 661, 695.

Decree of divorce essential.—*Pitts v. Pitts* (1873), 52 N. Y. 593; *Van Cleef v. Burns* (1890), 118 N. Y. 549, 23 N. E. 881; *Same v. Same* (1892), 133 N. Y. 540, 30 N. E. 661, 15 L. R. A. 542; *Reynolds v. Reynolds* (1840), 24 Wend. 193; *Cooper v. Whitney* (1842), 3 Hill 95.

An action for divorce does not survive the death of a party. Hence where a husband has obtained an interlocutory decree against his wife, and he dies before the entry of the final decree, she is entitled to dower. *Bryon v. Bryon* (1909), 134 App. Div. 320, 119 N. Y. Supp. 41.

A wife is not entitled to dower where at the time of the marriage the husband had a wife living, although the first wife had been absent for more than five successive years, and the parties acted in good faith. *Price v. Price* (1891), 124 N. Y. 589, 27 N. E. 383, 12 L. R. A. 359.

After plaintiff and her husband had separated in consequence of a "rabbinical divorce" each remarried with the full knowledge and acquiescence of the other and in the honest though mistaken belief that they were divorced and free to marry. *Held*, that plaintiff who lived with her so-called second husband and under his name for over twenty years must be deemed a party to the creation of a situation into which, without her participation, her first husband would not have entered, and she is equitably estopped from asserting a claim of dower in real estate purchased by him after their separation and conveyed by the joint deed of himself and the

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woman he had assumed to marry and represented to be his wife. *Kantor v. Cohn* (1917), 98 Misc. 355, 164 N. Y. Supp. 383.

Lands acquired after divorce are not subject to dower.—*Kade v. Lauber* (1875), 16 Abb. Pr. N. S. 238.

Effect of divorces granted in other states upon the lands of the husband in this state is to be determined by the laws of this state. *Van Cleef v. Burns* (1892), 133 N. Y. 540, 30 N. E. 661, 15 L. R. A. 542. See also *Van Cleef v. Burns* (1890), 118 N. Y. 549, 23 N. E. 881; *Williams v. Williams* (1891), 130 N. Y. 193, 29 N. E. 98, 14 L. R. A. 220.

A divorce *a vinculo matrimonii* obtained by the wife in another state, although for a cause not recognized as ground for absolute divorce in this state, does not, in effect, release and bar her claim to dower in property in this state owned by the husband during the marriage, although after acquired lands are not subject thereto. *Van Blaricum v. Larson* (1912), 205 N. Y. 355, 98 N. E. 488, 41 L. R. A. (N. S.) 219.

A divorce obtained by a wife in another state on the ground of cruelty, without personal service upon the husband, or his appearance in the action, is a bar to her dower in lands acquired by her husband after the divorce or owned at that time. Having voluntarily put an end to the marriage relation for a cause deemed inadequate in this state, public policy will not be promoted by allowing her claim for dower. *Voke v. Platt* (1905), 48 Misc. 273, 96 N. Y. Supp. 725.

§ 197. When dower barred by jointure.—Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 177; originally revised from R. S., pt. 2, ch. 1, tit. 3, §§ 9, 10.

Construction and application of section.—See *Witthaus v. Schack* (1887), 105 N. Y. 332, 11 N. E. 649; *Swaine v. Perine* (1821), 5 Johns. Ch. 482.

Agreement of jointure by infants.—The consent of the parent or guardian must be obtained. *McCartee v. Teller* (1831), 2 Paige 559, *affd.* (1831), 8 Wend. 267; *Boal v. Mix* (1827), 17 Wend. 119; *Temple v. Hawley* (1843), 1 Sandf. ch. 153; *Wetmore v. Kessam* (1858), 16 N. Y. Super. (3 Bosw.) 321, 334; *McIlvaine v. Kadel* (1865), 30 How. Pr. 193.

Valuable consideration is essential to the validity of a jointure. *Graham v. Graham* (1893), 67 Hun 329, 22 N. Y. Supp. 299, *affd.* (1894), 143 N. Y. 573, 38 N. E. 722.

Devise to widow for life not inconsistent with dower; when dower not chargeable upon remainders or other lands.—Where a testator devises the use of his residence to his widow for life the devise is not in lieu of dower, and the widow is not put to an election, but is entitled to both the life estate and dower. Such dower is not cut off because a devise of other lands in trust with power of sale cannot be carried out without denying the widow dower therein. But, as the life estate and the dower both attach to the same parcel of land and as both are life interests, the widow cannot, where the land subject thereto cannot be divided by metes and bounds, charge the value of the dower upon the interest of the remaindermen therein, or upon other lands of the estate in which she has no dower. *Springsteen v. Springsteen* (1916), 172 App. Div. 605, 158 N. Y. Supp. 848.

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§ 198. When dower barred by pecuniary provisions.—Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all the lands of her husband.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 178; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 11.

Validity and effect of ante-nuptial agreements.—An ante-nuptial contract between husband and wife, the result of which is to avoid the effect of marriage upon their property relations, is valid. *Matter of Young v. Hicks* (1883), 92 N. Y. 235.

Such an agreement in lieu of dower creates a covenant running with the land and a grantee of the husband is entitled to a specific performance thereof. *Carpenter v. Carpenter* (1886), 40 Hun 263.

The widow is not bound by an ante-nuptial agreement where the husband repudiated the same in his lifetime. *Sheldon v. Bliss* (1852), 8 N. Y. 31, 35.

Ante-nuptial agreements must be in writing.—*Lamb v. Lamb* (1897), 18 App. Div. 250, 46 N. Y. Supp. 219.

Construction of agreements.—See *Gray v. Gray* (1896), 5 App. Div. 132, 39 N. Y. Supp. 57; *Mundy v. Munson* (1886), 40 Hun 304; *Jones v. Flemming* (1887), 104 N. Y. 418, 10 N. E. 693. Such agreements are regarded with most rigid scrutiny. *Pierce v. Pierce* (1877), 71 N. Y. 154; *Graham v. Graham* (1894), 143 N. Y. 573, 38 N. E. 722, affg. (1892), 67 Hun 329, 22 N. Y. Supp. 299.

If there is reasonable doubt as to whether an ante-nuptial agreement was made in lieu of dower the widow will take both. *Brown v. Brown* (1907), 117 App. Div. 199, 102 N. Y. Supp. 291.

Articles of separation do not release the widow's dower. *Guidet v. Brown* (1877), 3 Abb. N. C. 295.

Ante-nuptial agreements and pecuniary provisions in general.—See *Hawley v. James* (1835), 5 Paige 318, 446, revd. (1836), 16 Wend. 61; *Larrabee v. Van Alstyne* (1806), 1 Johns. 307.

§ 199. When widow to elect between jointure and dower.—If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 179; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 12.

Election between jointure and dower.—*Jones v. Flemming* (1887), 104 N. Y. 418, 10 N. E. 693; *Crain v. Cavana* (1862), 36 Barb. 410; *Matter of Benson* (1884), 96 N. Y. 499; *Hendricks v. Isaacs* (1889), 117 N. Y. 411, 22 N. E. 1029, 6 L. R. A. 559; *Witthaus v. Schack* (1887), 105 N. Y. 332, 11 N. E. 649; *Akin v. Kellogg* (1890), 119 N. Y. 441, 23 N. E. 1046; *Doremus v. Doremus* (1892), 66 Hun 111, 21 N. Y. Supp. 13. But consideration must be restored. Cases above cited, and *Wood v. Seely* (1865), 32 N. Y. 105; *Lee v. Timken* (1896), 10 App. Div. 213, 41 N. Y. Supp. 979; *Dworsky v. Arndstein* (1898), 29 App. Div. 274, 51 N. Y. Supp. 597. See on this subject, *Matter of Grotrian* (1899), 30 Misc. 23, 62 N. Y. Supp. 996; *Koezly v. Koezly* (1900), 31 Misc. 397, 65 N. Y. Supp. 613; *Morette v. Bostwick* (1907), 56 Misc. 140, 143, 106 N. Y. Supp. 1102, revd. (1891), 127 App. Div. 701, 111 N. Y. Supp. 1021.

A wife entered into a separation agreement with her husband in and by which

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he agreed to pay her the sum of \$5,200 per annum during her life or until her remarriage, and that he would provide by his will for the payment of said sum to her yearly after his death if she survived him. The wife covenanted that at the request of her husband she would unite with him at any time in the execution of deeds of any real property he then owned or might thereafter acquire, "without compensation or payment other than hereinbefore provided," and such covenant, with all other provisions of the agreement, is to apply to and be binding upon the heirs, etc., of the parties. The husband executed his will pursuant to the agreement. It was held, that the agreement extinguished the wife's right of dower; and that the wife, having received and retained the pecuniary provision provided in the agreement for a period of six years, and not having returned or offered to return the same, elected to accept it in lieu of dower. *Hogg v. Lindridge* (1912), 151 App. Div. 513, 135 N. Y. Supp. 928.

Life estate in lieu of dower.—Where testator gave his wife a life estate in all his real estate after payment of taxes, insurance and repairs and authorized his executors and trustees to mortgage said real estate in certain contingencies, the widow is not also entitled to dower therein. *Matter of Foster* (1916), 93 Misc. 400, 156 N. Y. Supp. 1005, *affd.* (1917), 174 App. Div. 846, 159 N. Y. Supp. 1113.

A widow is entitled to dower, in addition to testamentary provisions in her favor, unless it is clear from the will that she should not have both. Where testator gave his real and personal property to trustees without power to sell or mortgage the realty, but directed them to pay the net profits of the estate to his widow during her life or until her remarriage and the will expressly provides that in the event of her remarriage her interest in testator's estate shall be limited to dower, she is entitled both to dower and the testamentary provisions for her benefit. *Matter of Knabe* (1916), 94 Misc. 67, 157 N. Y. Supp. 267.

§ 200. Election between devise and dower.—If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 180; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 13, as amended by L. 1895, chs. 171, 1022. The second amendment restored the section to its original form.

When widow is put to election.—When the real estate of a testator is devised so as to indicate clearly that he did not intend the use of one-third thereof to belong to his widow, she is put to her election as between a bequest for her benefit and her claim for dower. *Orth v. Haggerty* (1908), 126 App. Div. 118, 110 N. Y. Supp. 551.

Intention of testator must be clear. *Lewis v. Smith* (1854), 9 N. Y. 502; *Matter of Zahrt* (1884), 94 N. Y. 605; *Konvalinka v. Schlegel* (1885), 104 N. Y. 125, 99 N. E. 868; *Kimbel v. Kimbel* (1897), 14 App. Div. 570, 43 N. Y. Supp. 900; *Purdy v. Purdy* (1897), 18 App. Div. 310, 46 N. Y. Supp. 215; *Closs v. Eldert* (1898), 30 App. Div. 338, 51 N. Y. Supp. 881; *Matter of Smith* (1892), 1 Misc. 269, 22 N. Y. Supp. 1067; *Miller v. Miller* (1897), 22 Misc. 582, 49 N. Y. Supp. 407; *Matter of Grotrian* (1892), 30 Misc. 23, 62 N. Y. Supp. 996; *Duncklee v. Butler* (1899), 30 Misc. 58, 62 N. Y. Supp. 921; *Huff v. Wheeler* (1899), 27 Misc. 763, 59 N. Y. Supp. 716; *Gray v. Gray* (1896), 5 App. Div. 132, 39 N. Y. Supp. 57; *Matter of Vowers* (1889), 113 N. Y. 569, 21 N. E. 690, *revd.* (1887), 45 Hun 418. But if manifest, she must elect. *Savage v. Burnham* (1858), 17 N. Y. 561; *Vernon v. Vernon* (1873), 53 N. Y. 351; *Konvalinka v. Schlegel* (1885), 104 N. Y. 125, 99 N. E. 868; *Akin v. Kellogg* (1890), 119 N. Y. 441, 23 N. E. 1046; *Nelson v. Brown* (1895), 144 N. Y. 384;

Asch v. Asch (1889), 113 N. Y. 232, 21 N. E. 70; *Starr v. Starr* (1889), 54 Hun 300, *affd.* (1892), 132 N. Y. 154, 30 N. E. 384; *Jurgens v. Rogge* (1896), 16 Misc. 100, 37 N. Y. Supp. 249. And having elected, the fact that property turns out of less value does not justify her in revoking her acceptance. *Lee v. Tower* (1891), 124 N. Y. 370, 26 N. E. 943.

See, generally, as to where widow is put to election, *Matter of McKay* (1893), 5 Misc. 123, 25 N. Y. Supp. 725; *Lang v. Everling* (1893), 3 Misc. 530, 23 N. Y. Supp. 329; *Grout v. Cooper* (1876), 9 Hun 326; *Palmer v. Voorhis* (1861), 35 Barb. 479.

A provision of a will in favor of the wife, in order to bar her claim to dower, must be so clear and incompatible therewith as to compel the conclusion that that was what the testator intended. Where there is no room for doubt it must be resolved in favor of the dower right. *Roessle v. Roessle* (1914), 163 App. Div. 344, 148 N. Y. Supp. 659.

A wife, for a more favorable adjustment of the transfer tax, has a right to assert dower in specific lands devised to her by her husband, and in the possible case that she shall find that claims of creditors may intervene between the gift and its enjoyment. But where, in addition to such devise of the residuary estate in trust, the income thereof to be equally divided between testator's wife and son, the will provides that if the son dies during the lifetime of his mother one-half of said income shall go to his surviving child or children share and share alike, and directs that upon the death of testator's wife all the estate shall go to the son, and in event of his death before hers then upon the death of testator's wife all of the estate is given to the child or children of his said son, the widow is put to her election between dower and the provisions of the will as to lands other than those specifically devised to her. *Matter of Springsteen* (1914), 86 Misc. 389, 149 N. Y. Supp. 278.

Where a claim of dower is inconsistent with the provisions of a will, the widow is put to her election, although there is no provision that the legacy to the wife is intended to be in lieu of dower. *Adsit v. Adsit* (1817), 2 Johns. Ch. 450; *Ferris v. Ferris* (1894), 10 Misc. 320, 30 N. Y. Supp. 982. See also *Leonard v. Steele* (1848), 4 Barb. 20; *Lasher v. Lasher* (1852), 13 Barb. 106, 109 *Bull v. Church* (1843), 5 Hill 206, *affd.* (1845), 2 Denio 430; *Jackson ex dem. Loucks v. Churchill* (1827), 7 Cow. 287.

To constitute an assignment or admeasurement of dower by virtue of any agreement or any specific act of the party, it should be clearly manifest that such was the intention. It cannot be established by evidence of leases executed for brief periods, some of which do not specify the precise rights of the parties, and which the evidence shows were not executed with the view of admeasuring any right of dower. *Aickman v. Harsell* (1885), 98 N. Y. 186, 192.

The receipt by the widow of one-third of the rent in lieu of dower for several years after the death of her husband does not amount to an assignment of dower to bar her action therefor. *Ellicott v. Mosier* (1852), 7 N. Y. 201.

A widow's election is not binding unless made with full knowledge of the circumstances, and with the intention of electing. *Hindley v. Hindley* (1883), 29 Hun 318.

Interest on a legacy in lieu of dower is allowed from the time of the death of the testator. *Matter of McKay* (1893), 5 Misc. 126, 128, 25 N. Y. Supp. 725. But see *Matter of Hodgman* (1893), 69 Hun 484, 23 N. Y. Supp. 725, *affd.* (1893), 140 N. Y. 421, 35 N. E. 660. Such right is not affected by the fact that the legacy exceeds the dower interest. *In re Combs* (1885), 3 Dem. 348.

§ 201. When deemed to have elected.—Where a woman is entitled to an

election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of one year after the death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 181; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 14, as amended by L. 1895, ch. 1022.

What deemed election.—See *Akin v. Kellogg* (1890), 119 N. Y. 441, 23 N. E. 1046; *Lang v. Everling* (1893), 3 Misc. 530, 23 N. Y. Supp. 329; *Doty v. Hendrix* (1891), 16 N. Y. Supp. 284; *Jones v. Flemming* (1887), 104 N. Y. 418, 10 N. E. 693; *Matter of Zahrt* (1884), 94 N. Y. 605; *Lee v. Timken* (1894), 10 App. Div. 213, 41 N. Y. Supp. 979; *Matter of Smith* (1892), 1 Misc. 269, 273, 22 N. Y. Supp. 1067; *Grout v. Cooper* (1876), 9 Hun 326; *Doremus v. Doremus* (1892), 66 Hun 111, 21 N. Y. Supp. 13; *Beekman v. Vanderveer* (1885), 3 Dem. 619; *Duffy v. Duffy* (1893), 70 Hun 135, 24 N. Y. Supp. 408, 409.

When widow must elect.—Where the provisions in a will for the benefit of a widow and her claim to dower are so inconsistent that to enforce one would destroy the other, she is put to an election as to which she will take. *Matter of Tailer* (1911), 147 App. Div. 741, 751, 133 N. Y. Supp. 122, *affd.* (1912), 205 N. Y. 599, 98 N. E. 1116.

The power of election is purely personal so far as a widow is concerned and does not pass to her legal representatives. *Camardella v. Schwartz* (1908), 126 App. Div. 334, 336, 110 N. Y. Supp. 611; *Flynn v. McDermott* (1905), 183 N. Y. 62, 75 N. E. 931, 2 L. R. A. (N. S.) 959.

Widow is not entitled to notice of testamentary provisions.—*Palmer v. Voorhis* (1861), 35 Barb. 479, 483. Ignorance of the widow as to the condition of her husband's estate, or the fact that the testamentary provision is disproportionate to the value of her dower, does not relieve her from the effect of the statute. *Matter of Nagel* (1891), 35 N. Y. St. Rp. 245, 12 N. Y. Supp. 707.

An insane widow cannot be deprived of the right given to her to elect whether she will take her dower or a legacy. Her silence or her failure to enter or to commence an action to obtain her dower cannot be construed against her, and is not a waiver of her personal privilege. Although she is confined in a state hospital for the insane, the State Commission in Lunacy may not elect in her behalf. *Camardelle v. Schwartz* (1908), 126 App. Div. 334, 336, 110 N. Y. Supp. 611.

The widow's entry upon the lands, assigned to her for dower, in order to constitute an election, must be a positive unequivocal act announcing her determination to make an election. Thus, the continued occupation of the lands of her

husband is not sufficient. *In re Nagel* (1891), 35 N. Y. St. Rep. 245, 12 N. Y. Supp. 707.

Laws of state where land is situated to control.—In an action to admeasure plaintiff's dower in certain real estate in New York city, of which her husband died seized, it appeared that the testator, after making certain specific bequests to his wife and others, devised the residue of his estate, consisting of personal property and real estate situate in the District of Columbia, New York and New Jersey, to his wife and two children "absolutely and in fee simple, share and share alike." Under the law of the District of Columbia, where the will was executed and probated, and where the testator resided at the time of his death, the terms thereof barred dower. The will contained no clause providing that the provisions for the widow were "in lieu of dower." Thereafter the plaintiff, without claiming her dower interest, joined in the conveyance of the real estate, but about seven years after the probate of the will, learning of her rights under the law of this State, brought this action. It was held, on all the evidence, that the plaintiff was entitled to her dower interest in the lands of which her husband died seized, situate in this State, that the question whether the plaintiff is entitled to dower in the lands of which the testator died seized, situate in this State, should be determined by the laws of this State, unaffected by the laws of the District of Columbia; that the burden was upon the defendants to establish beyond question both the facts and the law necessary to deprive the plaintiff of her dower; the plaintiff cannot be deemed to have waived her claim as she knew nothing of her right under the New York law until a short time prior to the commencement of the action. *Roessle v. Roessle* (1914), 163 App. Div. 344, 148 N. Y. Supp. 659.

Action to admeasure.—In the action of a widow to recover dower it should appear that the husband was at some time seized of an estate of inheritance in the lands particularly specified and the occupants of the land in which dower is claimed should be made parties to the action. The action must in some way, whatever its form, be an unequivocal assertion of a claim to dower, and a renunciation of the provisions made by the will. Thus, a suit by a widow to set aside an instrument by which she elected to accept certain provisions of the will in lieu of dower, is not a proceeding for the recovery of dower within the meaning of this section compelling her to take such proceeding within a year. *Chamberlain v. Chamberlain* (1871), 43 N. Y. 424, 441.

The filing of a petition by the widow with the surrogate for the admeasurement of her dower is not the commencement of an action within the meaning of this section. *Walton's Estate* (1865), 1 Tuck. 10, 11.

One-year limitation.—Widow must elect in that time. See *Akin v. Kellogg* (1859), 119 N. Y. 441, 23 N. E. 1046; *Evans v. Ogsbury* (1896), 2 App. Div. 556, 37 N. Y. Supp. 1104; *Duffy v. Duffy* (1893), 70 Hun 135, 24 N. Y. Supp. 408; *Ferris v. Ferris* (1894), 10 Misc. 320, 30 N. Y. Supp. 982; *Matter of McKay* (1893), 5 Misc. 123, 126, 25 N. Y. Supp. 725; *Sanford v. Sanford* (1875), 4 Hun 753, 757.

Effect of death of widow within year.—Where a widow was bequeathed a legacy in lieu of dower, and dies within the year following her husband's death, during the pendency of an action which she had commenced, to have the will declared invalid and the probate thereof revoked, her personal representatives may bring an action thereafter against the testator's executors to recover the legacy bequeathed to the widow in lieu of dower. The commencement of the action by the widow cannot be construed as an action to recover her dower. *Flynn v. McDermott* (1905), 102 App. Div. 56, 92 N. Y. Supp. 1123, *affd.* (1905), 183 N. Y. 62, 75 N. E. 931, 2 L. R. A. (N. S.) 959.

When widow presumed to have elected.—Where a widow does not comply with

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this section, for the purpose of a transfer tax proceeding she will be presumed to have elected to take under the will, unless she is entitled to her dower in addition to the testamentary provision made for her *Matter of Stuyvesant* (1911), 72 Misc. 295, 131 N. Y. Supp. 197.

Extension of time to elect pending action by widow for construction of will. See *Bradhurst v. Field* (1890), 32 N. Y. St. Rep. 430, 10 N. Y. Supp. 452.

See also cases under section 199, *ante*.

§ 202. When provision in lieu of dower is forfeited.—Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 182; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 15.

Reference.—Partition of lands or personalty between husband and wife may bar dower. Domestic Relations Law, § 56.

§ 203. Effect of acts of husband.—An act, deed or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 183; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 16.

References.—Acknowledgement by married woman, Real Property Law, § 302. Deed from wife to husband, Domestic Relations Law, § 56.

Extinguishment of dower by acts of husband.—It is well settled that after dower has once attached it cannot be extinguished or suspended by any act of the husband alone in the nature of alienage or charge. *House v. Jackson* (1872), 50 N. Y. 161. See, generally, *Coster v. Clarke* (1840), 3 Edw. Ch. 428, 437; *Sanford v. Ellithorp* (1884), 95 N. Y. 48, 51; *Wronkow v. Oakley* (1892), 64 Hun 217, 19 N. Y. Supp. 525, *revd.* (1892), 133 N. Y. 505, 31 N. E. 521, 16 L. R. A. 209.

The committee of a lunatic has no authority to execute any instrument which will extinguish the lunatic's inchoate right of dower. *Matter of Dunn* (1892), 64 Hun 18, 18 N. Y. Supp. 723.

§ 204. Widow's quarantine.—A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 184; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 17.

Application of section is not limited to solvent estates. But the allowance is only intended to apply to the sustenance of the widow herself. *Johnson v. Cor-*

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bett (1844), 11 Paige 265, 276. The application of this section is limited to lands in which the widow has a right or claim of dower. *Voelckner v. Hudson* (1848), 3 N. Y. Super. (1 Sandf.) 215, 218.

In the absence of other proof as to its value the forty days' sustenance should be allowed to the widow at the rate paid for her board during the decedent's lifetime. *Matter of Stiles* (1909), 64 Misc. 658, 120 N. Y. Supp. 714.

See, generally, *Peters v. Tallchief* (1907), 121 App. Div. 309, 106 N. Y. Supp. 64; *Siglar v. Van Riper* (1833), 10 Wend. 414; *Jackson ex dem. Clark v. O'Donaghy* (1810), 7 Johns. 247; *Matter of Williams* (1898), 31 App. Div. 617, 618, 52 N. Y. Supp. 700.

After the expiration of a widow's quarantine she is not a squatter or intruder and cannot be removed by summary proceedings. *Lincoln Trust Co. v. Hutchinson* (1910), 65 Misc. 590, 120 N. Y. Supp. 811.

Where a widow occupies the premises for more than the forty days, and subsequently elects not to take under her husband's will, giving her the property for life at her election, her possession after such election will not avail her in the federal courts as against the legal title as affecting the right to the appointment of a receiver of the property. Her election was tantamount to a refusal to occupy the premises and she may be required to vacate them. *Underground Electric Rys. Co. v. Orosley* (1909), 169 Fed. 671.

In a proceeding to distribute surplus moneys arising upon a mortgage foreclosure, the widow of a mortgagor, who continued in the possession of the mortgaged premises during the period between the expiration of her quarantine and the delivery of the referee's deed, is chargeable with only two-thirds of the value of such use and occupation. *Shueler v. Levy* (1911), 73 Misc. 25, 130 N. Y. Supp. 600.

Reimbursement of a widow may be made for sums expended by her for reasonable support and maintenance during her quarantine. *Matter of Brown* (1912), 77 Misc. 507, 137 N. Y. Supp. 978.

§ 205. **Widow may bequeath a crop.**—A widow may bequeath a crop in the ground of land held by her in dower.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 185; originally revised from R. S., pt. 2, ch. 1, tit. 3, § 25.

§ 206. **Divorced woman may release dower.**—A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such property, and such as he shall hereafter acquire.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 186; originally revised from L. 1892, ch. 616.

Release to husband.—A release of dower to a husband after a divorce, together with a conveyance by the husband after such divorce, conveys a perfect title. *Schlesinger v. Kilinger* (1906), 112 App. Div. 853, 98 N. Y. Supp. 545.

§ 207. **Married woman may release dower by attorney.**—A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 187; originally revised from L. 1835, ch. 275; L. 1893, ch. 599.

ARTICLE VII.

LANDLORD AND TENANT.

- Section 220. Action for use and occupation.
221. Rent due on life leases recoverable.
222. When rent is apportionable.
223. Rights where property or lease is transferred.
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229. Liability of tenant holding over after giving notice of intention to quit.
230. Liability of tenant holding over after receiving notice to quit.
231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.
232. Duration of certain agreements in New York.

§ 220. Action for use and occupation.—The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 190; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 26.

When action will lie.—An action for use and occupation will lie against one who enters into possession of real estate under a verbal contract of purchase, although such contract is void by the statute of frauds. *Pierce v. Pierce* (1857), 25 Barb. 243, 249. But where such a purchaser changes himself into a trespasser, the action will not lie. *Smith v. Stewart* (1810), 6 Johns. 46.

If a tenant enters under a parol lease invalid under the statute, and occupies the premises, he may be compelled to pay for the use and occupation. *Thomas v. Nelson* (1877), 69 N. Y. 118; *Van Arsdale v. Buck* (1903), 82 App. Div. 383, 81 N. Y. Supp. 1017.

Where a landlord is defeated in an action under section 229 of the Real Property Law to recover double rent of a tenant who held over the term after having given notice to quit, the landlord is not, under such complaint, entitled to recover for use and occupation for the term during which the tenant held over. *Regan v. Fosdick* (1898), 23 Misc. 623, 52 N. Y. Supp. 122.

Where remaindermen elect to treat a tenant in possession as a tenant at will, he is liable for use and occupation according to the terms of the lease which had been terminated at the death of the life tenant. *Hinton v. Bogart* (1915), 166 App. Div. 155, 151 N. Y. Supp. 796.

No action can be maintained for use and occupation of premises, unless there be an agreement for the use of the premises, express or implied. *Jennings v. Alexander* (1856), 1 Hill. 154. And such an action will not lie against a person who has come in under the plaintiff as a purchaser from him. *Bancroft v. Wardwell* (1816), 13 Johns. 489. Conventional relation of landlord and tenant must

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exist. *Preston v. Hawley* (1893), 139 N. Y. 296, 24 N. E. 906; *Collyer v. Collyer* (1889), 113 N. Y. 442, 21 N. E. 114; *Lamb v. Lamb* (1895), 146 N. Y. 317, 323, 41 N. E. 26; *Coit v. Planer* (1868), 4 Abb. Pr. N. S. 140, 144, *affd.* (1873), 51 N. Y. 647. A subsisting tenancy between the parties must exist. *Kiersted v. O. & A. R. R. Co.* (1877), 69 N. Y. 343, 347.

An actual "occupation" is necessary. *Wood v. Wilcox* (1845), 1 Den 37, 38. There must be actual and continual occupation during the whole period for which the party is allowed to recover. *Seaman v. Ward* (1856), 1 Hilt. 52, 55. See also *Cleves v. Willoughby* (1845), 7 Hill 83, 88.

Action against assignee of unexpired term of a lease by reason of his occupation thereunder, see *Reynolds v. Lawton* (1889), 28 N. Y. St. Rep. 670, 8 N. Y. Supp. 403, 405.

When the lease is by deed, the action must be upon the demise. *Kiersted v. O. & A. R. R. Co.* (1877), 69 N. Y. 343, 346.

Complaint; sufficiency of.—*Coit v. Planer* (1868), 4 Abb. Pr. N. S. 140, 143, *affd.* (1873), 51 N. Y. 647.

Agreement as evidence.—*Pierce v. Pierce* (1857), 25 Barb. 243; *Williams v. Sherman* (1831), 7 Wend. 109. The agreement may be implied from circumstances. *Coit v. Planer* (1868), 4 Abb. Pr. N. S. 140, 144, *affd.* (1873), 51 N. Y. 647.

§ 221. Rent due on life leases recoverable.—Rent due on a lease for life or lives is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 191; originally revised from R. S., pt. 2, ch. 1, tit. 4, §§ 19-21.

See *Jacques v. Short* (1855), 20 Barb. 269, 274; *Wright v. Williams* (1826), 5 Cow. 501, 502.

§ 222. When rent is apportionable.—Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 192; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 22.

Revisers' note.—Modified to avoid some of the consequences of the decisions in *Fay v. Holloran* (1861), 35 Barb. 295; *Marshall v. Moseley* (1860), 21 N. Y. 280, that certain rents could not be apportioned. The modification seems to be in the direction of justice and the spirit of modern legislation on the subject.

Application of section is limited to cases where the demise is by the life tenant. *Stillwell v. Doughty* (1855), 3 Bradf. 359, 362.

§ 223. Rights where property or lease is transferred.—The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or per-

sonal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 193; originally revised from R. S., pt. 2, ch. 1, tit. 4, §§ 23–25; L. 1860, ch. 396.

Application.—*Van Rensselaer v. Hays* (1859), 19 N. Y. 68, 83; *Same v. Read* (1863), 26 N. Y. 558; *Cruger v. McLaury* (1869), 41 N. Y. 219; *Bradt v. Church* (1888), 110 N. Y. 537, 18 N. E. 357; *Tyler v. Heidorn* (1866), 46 Barb. 439; *McCool v. Jacoboas* (1867), 30 N. Y. Super. (7 Rob.) 115, 120; *Hunt v. Wolfe* (1868), 2 Daly 298, 301; *Anderson v. Treadwell* (1846), 1 Edm. S. C. 201, 205; *Lang v. Everling* (1893), 3 Misc. 530, 492, 23 N. Y. Supp. 329.

This section creates no new right and does not, as between lessor and lessee or their assigns, enlarge the rights and obligations imposed upon either party by the terms of the lease. It has no application to a controversy which has to do with the rights and duties of the owners of the fee as against the owners of the right to collect the rent reserved in the original leases. *Morehouse v. Woodruff* (1916), 218 N. Y. 494, 113 N. E. 512.

Assignee of lease; rights of.—Upon the assignment of the lease the relation of landlord and tenant is established between the assignee and the tenant, and the assignee becomes entitled to all the rights of the original lessee. *United Merchants' R. & Imp. Co. v. Roth* (1907), 53 Misc. 92, 102 N. Y. Supp. 1112, *revd. on other grounds* (1907), 122 App. Div. 628, 107 N. Y. Supp. 511, *mod.* (1908), 193 N. Y. 370, 86 N. E. 544.

As to covenants in a lease which run with the land and bind the assignee, see *Dolph v. White* (1855), 12 N. Y. 296. Assignee of rent may sue for the same. *Willard v. Tillman* (1842), 2 Hill 274, 276. Recovery for injuries may be had by the assignee of a lease, where he is also the owner of the reversion. *Thacker v. Henderson* (1862), 63 Barb. 271, 279.

Failure to furnish power and heat affects the use and enjoyment of demised premises, and the lessee may maintain an action for the breach against his lessor's grantee where he has attorned to the latter. *Storandt v. Vogel & Binder Co.* (1910), 140 App. Div. 671, 125 N. Y. Supp. 568.

Re-entry for condition broken.—The assignee or grantee of an entire reversion may enter for condition broken. *Van Rensselaer v. Jewett* (1847), 5 Den. 121, 127, *affd.* (1849), 2 N. Y. 141. Conditions in a deed can only be reserved for the grantor and his heirs. Thus, the grantor of an estate depending upon a condition subsequent cannot assign the right to re-enter for condition broken. *Nicoll v. N. Y. & Erie R. R. Co.* (1852), 12 Barb. 400, 462, *affd.* (1854), 12 N. Y. 121.

A lessee, whose lease begins at the termination of a prior lease, is entitled to the possession as successor to the landlord, and while there may be no privity of contract between the new tenant and the old one, there is privity of estate, and the new tenant has the right to treat the old one as a tenant for a new term under this section. *United Merchants' Realty and Improvement Co. v. Roth* (1908), 193 N. Y. 570, 86 N. E. 544, *affg.* (1907), 122 App. Div. 628, 107 N. Y. Supp. 511.

Summary proceedings by new tenant against former tenant, see *Eells v. Morse*

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(1911), 142 App. Div. 592, 127 N. Y. Supp. 438, *affd.* (1913), 208 N. Y. 103, 101 N. E. 803.

This section does not authorize a tenant in summary proceedings against him for nonpayment of rent to interpose a counterclaim running in favor solely of his assignee, neither has the tenant the right to interpose a counterclaim because his position is practically that of surety for his assignee of the lease. *Matter of Barney v. Du Vivier* (1914), 86 Misc. 29, 147 N. Y. Supp. 913.

Action on collateral agreement.—The grantee of demised premises cannot maintain an action in his own name upon a collateral agreement made with his grantor by a third person, such as a guaranty for the payment of rent. *Harbeck v. Sylvester* (1835), 13 Wend. 608, 609.

See, generally, *Towle v. Palmer* (1863), 1 Abb. Pr. N. S. 81, 106; *Main v. Green* (1860), 32 Barb. 448; *Main v. Davis* (1860), 32 Barb. 461; *Van Rensselaer v. Secor* (1860), 32 Barb. 469, 473; *Van Rensselaer v. Smith* (1858), 27 Barb. 104, 173, *affd.* (1859), 19 N. Y. 68.

§ 224. Attornment by tenant.—The attornment of a tenant to a stranger is absolutely void, and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,
2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or,
3. To a mortgagee, after the mortgage has become forfeited.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 194; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 3.

Attornment; right of purchaser of leased lands on foreclosure.—Attornment at common law was the acknowledgment by a tenant of a new landlord on the alienation of land and an agreement to become the tenant of the purchaser. It could take place only when the land was alienated after the execution of the lease. To remedy this, this statute was enacted giving generally to the assignor of the reversion the same rights of actions that the original lessor had upon the covenants in the lease. The purchaser at a foreclosure sale of real property acquires all the right, title and interest of the mortgagor, subject to such valid leases and incumbrances as have not been cut off by the foreclosure. He is in legal effect the grantee of the reversion and entitled to pursue any remedy that the mortgagor might have pursued if he had continued to be the owner. If the lessee had been made a party to the foreclosure action, his lease being subsequent and subordinate to the mortgage, would have been annulled and his continuance in possession would have been unlawful. In that case the relation of landlord and tenant would not be created between him and the purchaser and summary proceedings could not be resorted to. The purchaser's remedy in that case is to apply for a writ of assistance. But where the relation of landlord and tenant is thus created, a sufficient foundation exists for the institution of summary proceedings for the recovery of possession if the tenant refuses to abide by the covenants of his lease. *Commonwealth Mortgage Co. v. DeWaltoff* (1909), 135 App. Div. 33, 119 N. Y. Supp. 781, *revd.* (1909), 62 Misc. 639, 115 N. Y. Supp. 1090.

Attornment to a stranger is void.—See *Freeman v. Ogden* (1869), 40 N. Y. 105, 109; *Merritt v. Smith* (1899), 27 Misc. 366, 58 N. Y. Supp. 851, *affd.* (1900), 50 App. Div. 349, 63 N. Y. Supp. 1068; *Lawrence v. Brown* (1851), 5 N. Y. 394, 404.

An attornment by a tenant, to one who obtains title to real estate pursuant to a tax sale, is an attornment to a stranger, and as against the former owner void. *O'Donnell v. McIntyre* (1890), 118 N. Y. 156, 23 N. E. 455.

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An attempted attornment to strangers to the title to land is a nullity. *Stewart v. Briggs* (1910), 138 App. Div. 701, 123 N. Y. Supp. 803.

An attornment by a tenant to an adverse claimant, being void, does not create the relation of landlord and tenant so as to justify the summary removal of the tenant. *Donelly v. O'Day* (1892), 1 Misc. 165, 20 N. Y. Supp. 688.

§ 225. Notice of action adverse to possession of tenant.—Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the value of three years' rent of such property, to the landlord or other person of whom he holds.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 195; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 27.

Application.—It seems that this section does not apply to a notice of an intention to apply for a sale under a surrogate's decree for payment of debts. *Rigney v. Coles* (1860), 19 N. Y. Super (6 Bosw.) 479, 493.

See, generally, *Stewart v. Smith* (1864), 4 Abb. Ct. App. Dec. 306, 307.

§ 226. Effect of renewal on sub-lease.—The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 196; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 2.

Surrender may result by operation of law.—*Bedford v. Terhune* (1864), 30 N. Y. 453. Such a surrender exists when the parties, without any express surrender, do some act so inconsistent with the subsisting relation of landlord and tenant as to imply that they have both agreed to consider the surrender as made. *Lewis v. Angermiller* (1895), 89 Hun 65, 35 N. Y. Supp. 69. See also *Schreffelin v. Carpenter* (1836), 15 Wend. 400.

The acceptance by a tenant of a new lease of the same premises during the term of the first lease is deemed a surrender of the first lease. *Van Rensselaer's Heirs v. Penniman* (1831), 6 Wend. 569; *Abell v. Williams* (1869), 3 Daly 17. But an agreement for a new lease will not affect the surrender of an existing lease by operation of law, unless a new lease is made, valid in law to pass interest according to the contract and intention of the parties. *Coe v. Hobby* (1878), 72 N. Y. 141; *Chamberlain v. Dunlop* (1891), 126 N. Y. 45, 26 N. E. 966.

The surrender of the original lease by a lessee does not affect the term of a sub-lessee. *Weiss v. Mendelson* (1898), 24 Misc. 692, 53 N. Y. Supp. 803.

§ 227. When tenant may surrender premises.—Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of

the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 197; originally revised from L. 1860, ch. 345.

Relation to law of eviction.—This section has nothing to do with the law of eviction. It only changes the hard rule of the common law by giving a tenant the right to quit and surrender possession of the lease without permission, and thereby release himself for rent accruing after such surrender. In place of enlarging the law of eviction it does not provide for an eviction, but only confers an option to quit and surrender after such injury or destruction of the building. Instead of being evicted a tenant still has possession of the leased property, and it may be to his profit to continue to hold it. Where a water pipe in the leased premises burst, and the landlord refused to repair it, the statute does not apply. *Baldwin v. Cohen* (1909), 132 App. Div. 87, 116 N. Y. Supp. 510.

A constructive eviction in the absence of statute can take place only where a tenant is deprived of his enjoyment of the demised premises by the act or omission of the landlord. *Barnard Realty Co. v. Bonwit* (1912), 76 Misc. 464, 135 N. Y. Supp. 700, *revd. on other grounds* (1913), 155 App. Div. 108, 139 N. Y. Supp. 1050.

Application.—This section does not apply to the letting of the premises with a full knowledge that they are to be rendered untenable. *Alshelmer v. Krohn* (1873), 45 How. Pr. 127; *Bloomer v. Merrill* (1865), 29 How. Pr. 259, 262. It was passed for the benefit of lessees and not for the benefit of lessors. *Austin v. Field* (1869), 7 Abb. Pr. N. S. 29.

If the premises were unfit for occupation before the tenant moved in or if they became so after he moved out, in either case he is not within this section. *Murray v. Waller* (1870), 42 How. Pr. 64.

The mere fact that premises were less serviceable than the tenant expected them to be does not justify a surrender, where they were not untenable. *Cox v. Cryder* (1915), 168 App. Div. 624, 154 N. Y. Supp. 452.

Effect of covenants.—A covenant relative to the right to terminate a lease in case of the destruction of the premises renders this section inapplicable. *Tocci v. Powell* (1896), 9 App. Div. 283, 41 N. Y. Supp. 511; *Bacon v. Albany Perforated Wrapping Co.* (1898), 22 Misc. 592, 49 N. Y. Supp. 620; *Nino v. Harnay* (1898), 23 Misc. 126, 50 N. Y. Supp. 686. When deemed waiver. See *Vann v. Rouse* (1884), 94 N. Y. 401; *Butler v. Kidder* (1881), 87 N. Y. 98. See also *N. Y. Real Estate & B. I. Co. v. Motley* (1894), 143 N. Y. 156, 38 N. E. 103; *May v. Gillis* (1873), 53 App. Div. 393, 66 N. Y. Supp. 4, *revd.* (1901), 169 N. Y. 330, 62 N. E. 385.

Where in a lease by the use of the words "partially damaged" and "totally destroyed," the parties have provided for any conceivable damage by fire, this section has no application and the rights of the parties depend solely upon the interpretation of the lease. *Stieglitz v. Cohen* (1910), 66 Misc. 169, 121 N. Y. Supp. 276.

Under a lease providing that if the leased premises are injured by fire so as to render them untenable the rent shall cease until such time as the premises shall be put in condition by the landlord, but in case of the destruction of the building by fire or otherwise so as to render it necessary to rebuild the same the lease shall end, the tenant cannot surrender possession and terminate the lease under authority of this section. *Friedlander v. Citron* (1910), 140 App. Div. 489, 125 N. Y. Supp. 510.

A covenant by a lessee "to make all inside and outside repairs" imports a general covenant to make ordinary and not extraordinary repairs, and does not deprive him of the protection of the above section where the premises, without his fault, have been so injured by the elements as to be untenable and unfit for

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occupancy. *May v. Gillis* (1901), 169 N. Y. 330, 62 N. E. 385, revg. (1900), 53 App. Div. 393, 66 N. Y. Supp. 4.

The following clause contained in a lease: "The tenant shall in case of fire give immediate notice thereof to the landlord, who shall thereupon cause the damage to be repaired as soon as reasonably and conveniently may be, but if the premises be so damaged that the landlord shall decide to rebuild, the term lease shall cease and the accrued rent be paid up to the time of the fire," removes the leased premises from the operation of this section. *Roman v. Taylor* (1904), 93 App. Div. 449, 87 N. Y. Supp. 653.

Where a lease contained a provision that the lessee should insure the building for his own benefit and authorizing the lessee to rebuild the building in case of its destruction by fire, and subsequent to the execution of the lease a further agreement was entered into which recited that the lessor should pay to him all moneys received under a policy in force when the lease was executed, which should be used in repairing all damages caused by fire, it was held that in the event of the building becoming untenable because of fire the lessee should not surrender under the above section. *Lehmeyer v. Moses* (1902), 67 App. Div. 531, 73 N. Y. Supp. 1016, *affd.* (1903), 174 N. Y. 518, 66 N. E. 1111.

Unless a landlord covenants to repair demised premises, he is not bound to do so, even though the injury be caused by fire. *Sawyer v. Adams* (1910), 140 App. Div. 756, 126 N. Y. Supp. 128.

Section dissolves relation of landlord and tenant.—*Fleischman v. Toplitz* (1892), 134 N. Y. 349, 31 N. E. 1089; *Smith v. Kerr* (188), 108 N. Y. 31, 15 N. E. 70; *Johnson v. Oppenheim* (1874), 55 N. Y. 280; *Doupe v. Genin* (1871), 45 N. Y. 119; *N. Y. Real Estate & B. I. Co. v. Motley* (1894), 143 N. Y. 156, 38 N. E. 103.

Accrued rent must be paid. *Craig v. Butler* (1894), 83 Hun 286, 31 N. Y. Supp. 963, *affd.* (1898), 156 N. Y. 672, 50 N. E. 962; *Kahn v. Simons* (1899), 25 Misc. 737, 55 N. Y. Supp. 619; *Cheesebrough v. Lieber* (1896), 18 Misc. 459, 42 N. Y. Supp. 1122; *McGregor v. Board of Education* (1887), 107 N. Y. 517, 14 N. E. 420; *Underhill v. Collins* (1892), 132 N. Y. 271, 30 N. E. 576; *Conklin v. White* (1886), 17 Abb. N. C. 316; *Gugel v. Isaacs* (1897), 21 App. Div. 503, 48 N. Y. Supp. 594, *affd.* (1900), 162 N. Y. 636, 57 N. E. 1111; *Werner v. Padula* (1900), 49 App. Div. 135, 63 N. Y. Supp. 68, *affd.* (1901), 167 N. Y. 611, 60 N. E. 1122; *Davis v. Banks* (1869), 32 N. Y. Super. (2 Sweeney) 184, 188.

Tenant must be free from fault or neglect.—*Marks v. Dellaglio* (1899), 28 Misc. 539, 542, 59 N. Y. Supp. 509.

Notice to landlord unnecessary.—*Fleischman v. Toplitz* (1892), 134 N. Y. 349, 31 N. E. 1089.

But premises must be abandoned.—*Johnson v. Oppenheim* (1874), 55 N. Y. 280; *Lansing v. Thompson* (1896), 8 App. Div. 54, 40 N. Y. Supp. 425; *Smith v. Kerr* (1888), 108 N. Y. 31, 15 N. E. 70; *Danziger v. Falkenberg* (1892), 46 N. Y. St. Rep. 331, 18 N. Y. Supp. 927.

In a reasonable time.—Where leased premises are damaged by fire so as to be unfit for occupancy, the tenant should have a reasonable time to remove. *Zimmer v. Black* (1891), 37 N. Y. St. Rep. 312, 14 N. Y. Supp. 107. An independent agreement with the landlord, subsequent to surrendering the premises, allowing the tenant to keep his goods on the premises until he can sell them, does not defeat the tenant's right of surrender. *Kelly v. Partridge* (1893), 4 Misc. 205, 23 N. Y. Supp. 1027.

Circumstances justifying surrender.—This section is applicable only where there is some physical destruction of the property or some defect in it which makes it uninhabitable. *Floyd-Jones v. Schaan* (1908), 129 App. Div. 82, 114 N. Y. Supp. 1127. Section has reference to a destruction or injury resulting from some sudden and unexpected action of the elements or other cause, and not ordinary

and gradual deterioration and decay. *Meserole v. Hoyt* (1899), 161 N. Y. 59, 55 N. E. 274; *Lansing v. Thompson* (1896), 8 App. Div. 54, 40 N. Y. Supp. 425; *Bloomer v. Merrill* (1865), 1 Daly 485; *Austin v. Field* (1869), 7 Abb. Pr. (N. S.) 29; *Edwards v. McLean* (1890), 122 N. Y. 302, 25 N. E. 483. The authority of *Suydam v. Jackson* (1873), 54 N. Y. 450, as to the necessity of a sudden and violent destruction of the premises is limited by *Tallman v. Murphy* (1890), 120 N. Y. 345, 24 N. E. 716. Ordinary inconveniences will not justify the tenant in surrendering the premises. *Humes v. Gardner* (1898), 22 Misc. 33, 49 N. Y. Supp. 147. Injury must be substantial. *Tallman v. Murphy* (1890), 120 N. Y. 345, 24 N. E. 716. See also *Brass v. Rathbone* (1897), 153 N. Y. 435, 47 N. E. 905; *Lathers v. Coates* (1896), 18 Misc. 231, 41 N. Y. Supp. 373; *O'Gorman v. Harby* (1896), 18 Misc. 228, 41 N. Y. Supp. 521; *Sully v. Schmitt* (1895), 147 N. Y. 248, 41 N. E. 514.

This section evidently contemplates a physical destruction of the premises. Thus, it has been held that an outbreak of scarlet fever at a hotel will not relieve a person who voluntarily vacates his apartments through fear of contagion from liability to pay rent for the unexpired term. *Majestic Hotel Co. v. Eyre* (1900), 53 App. Div. 273, 65 N. Y. Supp. 745.

Injury caused by water; one of the elements.—Where premises at the time of the lease were in such a condition that by gradual deterioration the rain soaked through the roof and ran into and flooded the cellar so as to render the premises untenable, it was held that the tenant might surrender possession under the provision of this section. Water, one of the elements, was deemed a proximate cause of the injury. *Meserole v. Sinn* (1898), 34 App. Div. 33, 53 N. Y. Supp. 1072, *affd.* (1900), 161 N. Y. 59, 55 N. E. 274.

Where leased premises are injured by water used in extinguishing a fire in another portion of the building to such an extent as to render them unfit for occupancy, the tenants' removal from the premises is justified. *Roman v. Taylor* (1904), 93 App. Div. 449, 87 N. Y. Supp. 653.

Injury by explosions or vibrations; building under control of landlord.—A building shaken by repeated explosions which caused the walls of the ceiling to crack; and the rooms of which were at the time full of smoke and gas, may be held to be untenable within the meaning of this section where such building was under the control of the landlord, such as an apartment house. *Tallman v. Murphy* (1890), 120 N. Y. 345, 350, 24 N. E. 716; *Tallman v. Earle* (1893), 3 Misc. 76, 23 N. Y. Supp. 17. But vibrations caused by an adjoining electric plant, with which the lessor had no connection, does not justify a surrender by the tenant. *Floyd-Jones v. Schaan* (1908), 129 App. Div. 82, 114 N. Y. Supp. 1127.

Defective plumbing may make a building untenable and unfit for occupation. *St. Michael's P. E. Church v. Behrens* (1886), 13 Daly 548, 552. Premises are to be regarded as "untenable" because of the escape of sewer gas from a defective plumbing. *Chadwick v. Woodward* (1883), 13 Abb. N. C. 441, *affd.* (1884), 12 Daly 399.

Offensive odors arising from the gradual deterioration of a drain from the failure to make ordinary repairs, but the needs of which are not likely to be observed save by an expert, will not render the premises uninhabitable so as to justify a surrender under this section. *Marks v. Dellaglio* (1899), 28 Misc. 539, 542, 59 N. Y. Supp. 509.

A stench from a drain caused by the water from a canal obstructing the passage of sewage, does not justify the tenant in abandoning premises, especially where he was somewhat familiar with the conditions before making the lease. *Sully v. Schmitt* (1890), 31 N. Y. St. Rep. 443, 11 N. Y. Supp. 153, *affd.* (1890), 33 N. Y. St. Rep. 873, 11 N. Y. Supp. 694.

Making of repairs by landlord.—A covenant in a lease of a brick building, that

the tenant will "comply with all the requirements of the Board of Health, Municipal Authorities and Police and Fire Departments of the City of New York," does not obligate the tenant to make or pay the expense of extensive repairs ordered by the board of health, which are structural in their nature and consist in tearing down and replacing walls of the building. As the making of such repairs by the landlord rendered the building untenable the tenant was justified in surrendering possession under this section of the Real Property Law. *Warrin v. Haverty* (1913), 159 App. Div. 840, 144 N. Y. Supp. 1004.

Failure of landlord to make repairs.—Where the tenant has absolute control of the premises and the lease contains no covenant by the landlord to make repairs, the tenant is not entitled to vacate the premises under this section because they became dilapidated. The result of this case might have been different if the landlord had absolute control of the entire premises. *Oakley v. Loening* (1894), 8 Misc. 320, 28 N. Y. Supp. 735.

Mere failure of a landlord to perform his covenant to provide for light and ventilation does not justify surrender under this section. *Huber v. Ryan* (1899), 26 Misc. 428, 430, 56 N. Y. Supp. 135.

Where the defect existed when the lease was made and no fraud or misrepresentation is shown on the part of the lessor, or when the defect results from the neglect of the lessee to make ordinary repairs, or from deterioration due to the ordinary use of the premises by the lessee, the lessee is not justified in abandoning the premises under the provisions of the above section. *Sherman v. Ludin* (1903), 79 App. Div. 37, 79 N. Y. Supp. 1066; *Prahar v. Tonsey* (1904), 93 App. Div. 507, 87 N. Y. Supp. 845.

"Any other cause"; meaning of phrase.—This section has no reference to negative causes, as to wear and tear or gradual deterioration. The general phrase "or any other cause" does not enlarge its intendment in this respect. It means any other cause of that kind of destruction or injury. *Huber v. Ryan* (1899), 26 Misc. 428, 430, 56 N. Y. Supp. 135.

See generally, *Trumbull v. Bombard* (1916), 171 App. Div. 700, 157 N. Y. Supp. 794; *Herald Square Realty Co. v. Saks & Co.* (1913), 157 App. Div. 566, 569, 142 N. Y. Supp. 808; *Lehmeyer v. Moses* (1910), 69 Misc. 467, 127 N. Y. Supp. 253; *Copeland v. Luttgen* (1896), 17 Misc. 604, 40 N. Y. Supp. 653; *Decker v. Morton* (1898), 31 App. Div. 469, 52 N. Y. Supp. 172; *Zimmer v. Black* (1891), 37 N. Y. St. Rep. 312, 14 N. Y. Supp. 107; *Bassett v. Bean* (1885), 34 Hun 250; *Fleischman v. Topfritz* (1892), 134 N. Y. 349, 31 N. E. 1089; *Stein v. Rice* (1898), 23 Misc. 348, 51 N. Y. Supp. 320.

§ 228. **Termination of tenancies at will or by sufferance, by notice.**—A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 198; originally revised from R. S., pt. 2, ch. 1, tit. 4, §§ 7-9.

Tenancy by will or sufferance; what constitutes. See notes under § 30, ante.

Application.—Inapplicable to tenancy from year to year. *Adams v. City of Cohoes* (1891), 127 N. Y. 175, 28 N. E. 25. Or from month to month. *People ex rel. Oldhouse v. Goellet* (1873), 64 Barb. 476, 14 Abb. Pr. N. S. 130; *Gibbons v. Dayton* (1875), 4 Hun 451. Inapplicable to trespassers. *Reckhow v. Schanck* (1871), 43 N. Y. 448.

The necessity or occasion for the service of a notice to quit upon the part of the landlord or tenant, has no application to a tenancy which terminates at a fixed period. It is only in cases where the end of the term is not fixed, as in tenancies at will or at sufferance, that the landlord is required by law before bringing ejectment or summary proceedings to recover possession from a tenant to give notice to quit. *Adams v. City of Cohoes* (1891), 127 N. Y. 175, 28 N. E. 25.

Notice to quit is necessary before the landlord can maintain ejectment against the tenant. *Jackson ex dem. Church v. Miller* (1827), 7 Cow. 747.

No notice to quit is necessary when the termination of a lease is fixed and defined, or when the term is for one year. *Rorbach v. Crossett* (1892), 46 N. Y. St. Rep. 426, 19 N. Y. Supp. 450. In the case of a tenancy at sufferance, no notice is necessary unless the landlord has permitted such tenancy to continue for such a length of time as to imply assent. *Rowan v. Lytle* (1834), 11 Wend. 616, 620.

A tenancy from month to month can only be terminated by a month's notice to quit, expiring with the end of some month reckoning from the beginning of the tenancy. *People ex rel. Botsford v. Darling* (1872), 47 N. Y. 666; *Witherbee, Sherman & Co. v. Wykes* (1913), 159 App. Div. 24, 143 N. Y. Supp. 1067; *Hungerford v. Wagoner* (1890), 5 App. Div. 590, 39 N. Y. Supp. 369; *Geiger v. Braun* (1876), 6 Daly 506.

The form of the notice is not prescribed further than it must require the tenant to remove from the premises and it must be in writing. It need not specify the time within which the premises must be surrendered, but if a time be specified in the notice served upon the tenant which elapses within less than one month from the time of service of the notice, it will not vitiate the notice. *Burns v. Bryant* (1865), 31 N. Y. 453.

There is nothing in the statute which requires the notice to surrender the possession to expire at any particular time, and it may, for anything there found, as well terminate in the middle as at the end of the month. *Peer v. O'Leary* (1894), 8 Misc. 350, 28 N. Y. Supp. 637.

A verbal notice on request to lease is not sufficient. *Nowlan v. Trevor* (1869), 32 N. Y. Super. (2 Sweeny) 67.

Service of notice by mail is insufficient. *Witherbee, Sherman & Co. v. Wykes* (1913), 159 App. Div. 24, 143 N. Y. Supp. 1067.

Service of a notice to quit is not in law an admission of a subsisting tenancy, especially where such notice is served at the same time with a declaration and notice in ejectment. *Powers v. Ingraham* (1848), 3 Barb. 576.

Waiver by tenant of right to notice.—A tenant at will waives his right to the statutory notice to quit where, in an action of ejectment against him, his counsel, a question having arisen as to the legitimacy of the plaintiff, states that the defendant disclaims any right to the premises if the plaintiff was the heir of his father. *Wissel v. Ott* (1898), 34 App. Div. 159, 54 N. Y. Supp. 605.

Waiver by landlord of right to proceed under notice.—A landlord by giving a second notice to quit after the expiration of the first notice, waives his right to proceed under the first notice. *Morgan v. Powers* (1894), 83 Hun 298, 31 N. Y. Supp. 954.

Summary proceeding; pleading notice to quit.—Notice to quit must be alleged in petition for removal of tenant. *Altschuler v. Lipschitz* (1909), 113 N. Y. Supp. 1058. A mere allegation of service of notice, without alleging the manner of

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service or that the same was duly made, is insufficient to give the justice jurisdiction to grant the order. *Witherbee, Sherman & Co. v. Wykes* (1913), 159 App. Div. 24, 143 N. Y. Supp. 1067.

A tenant in possession under an invalid lease is a tenant at will, and a petition in summary proceedings for his removal which does not allege that he was given the notice required by this section is jurisdictionally defective, but where the tenant enters a general appearance, goes to trial upon the merits and makes no motion in regard to such defect, it is waived. *Carman v. Fox* (1914), 86 Misc. 197, 149 N. Y. Supp. 213.

Section cited.—*Lewis v. Humphrey* (1847), 4 Den. 185.

§ 229. Liability of tenant holding over after giving notice of intention to quit.—If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continue in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 199; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 10.

Holding over; what constitutes.—See *Vosburgh v. Corn* (1897), 23 App. Div. 147, 48 N. Y. Supp. 598; *Luger v. Goerke* (1897), 18 App. Div. 291, 45 N. Y. Supp. 839; *Valentine v. Healey* (1899), 158 N. Y. 369, 52 N. E. 1097, 43 L. R. A. 667; *Haynes v. Aldrich* (1892), 133 N. Y. 287, 31 N. E. 94; *Schwarzler v. McClenahan* (1899), 38 App. Div. 525, 56 N. Y. Supp. 611; holding over a question of fact, *Frost v. Akron Iron Co.* (1896), 1 App. Div. 449, 37 N. Y. Supp. 374.

Inevitable accident or the act of God may excuse a tenant from liability for his omission to surrender premises. *Herter v. Mullen* (1899), 159 N. Y. 28, 53 N. E. 700, 44 L. R. A. 703.

Retention of possession caused by sickness not a holding over.—If a tenant, intending to remove on the expiration of his term, is prevented by being obliged to retain a room in the house for a few days on account of the sickness of a member of his family, it is not a holding over within the meaning of the rule which permits the landlord to continue the lease and recover rent for another year. *Herter v. Mullen* (1899), 159 N. Y. 28, 53 N. E. 700, 44 L. R. A. 703.

Where a landlord is defeated in an action to recover double rent of a tenant who held over the term after having given notice to quit, the landlord is not, under such complaint, entitled to recover single rent for the term during which the tenant held over. *Regan v. Fosdick* (1898), 23 Misc. 623, 52 N. Y. Supp. 122.

§ 230. Liability of tenant holding over after receiving notice to quit.—Where, on the termination of an estate for life, or for years, the person entitled to the possession demands the same, and serves, in the same manner as for the termination of a tenancy at will, a written notice to quit, if the tenant, or any person in possession under him, or by collusion with him, wilfully holds over, after the expiration of thirty days from such service, he must pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the property detained, for the time while he so detains the same, together with all damages incurred by the person so kept out by reason of such detention. There is no equitable

defense or relief against a demand accrued, or a recovery had, under this section.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 200; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 11.

Application; holding over must be wilful.—The remedy provided for can be invoked only where the holding over by the tenant or a person in possession after the expiration of thirty days from the service of a notice to quit is wilful, and it is essential that the complaint allege the holding over to be wilful, deliberate, intentional, obstinate, unreasonable and perverse. The right to double damages provided for are not excluded by §§ 496, 497 and 1531, of the Code of Civil Procedure. *Barson v. Mulligan* (1908), 191 N. Y. 306, 84 N. E. 75, 16 L. R. A. (N. S.) 151, revg. (1907), 120 App. Div. 897, 105 N. Y. Supp. 1106.

When a complaint is framed in an action by a landlord for use and occupation of the premises with the consent of the landlord without reference to the provisions of this section, such section is not available in the action. *Stevens v. City of New York* (1906), 111 App. Div. 362, 97 N. Y. Supp. 1062.

See, generally, *Haynes v. Aldrich* (1892), 133 N. Y. 287, 31 N. E. 94; *Oussani v. Thompson* (1897), 19 Misc. 524, 43 N. Y. Supp. 1061; *Schuyler v. Smith* (1873), 51 N. Y. 313; *Herter v. Mullen* (1899), 159 N. Y. 28, 53 N. E. 700, 44 L. R. A. 703; *Frost v. Akron Iron Co.* (1896), 1 App. Div. 449, 37 N. Y. Supp. 374; *Johnson v. Doll* (1895), 11 Misc. 345, 32 N. Y. Supp. 132; *Hausauer v. Dahlman* (1897), 18 App. Div. 475, 45 N. Y. Supp. 1088, affd. (1900), 163 N. Y. 567, 57 N. E. 1111.

§ 231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.—1. Whenever the lessee or occupant other than the owner of any building or premises, shall use or occupy the same, or any part thereof, for any illegal trade, manufacture or other business, the lease or agreement for the letting or occupancy of such building or premises shall thereupon become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied.

2. The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 201; subd. 1, from L. 1873, ch. 583; originally revised from L. 1873, ch. 583, § 2.

Consolidators' note.—Subd. 1 of this section is new. It is the remaining unpeeled part of L. 1873, ch. 583. Both subdivisions came from the same act and belong in the same section.

Application of section.—See *Ernst v. Crosby* (1893), 140 N. Y. 364, 35 N. E. 603; *Adler v. Miles* (1910), 69 Misc. 601, 607, 126 N. Y. Supp. 135.

§ 232. Duration of certain agreements in New York.—An agreement for the occupation of real property in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of May next after the possession commences under the agreement; and rent thereunder is payable at the usual quarter

days, for the payment of rent in that city, unless otherwise expressed in the agreement.

• *Source*.—Former Real Prop. L. (L. 1896, ch. 547) § 202; originally revised from R. S., pt. 2, ch. 1, tit. 4, § 1.

Application.—It is only where there is an agreement for hiring in which the term of a lease remains undertermined that this section applies. A three-year lease of premises expiring May 1, 1915, was terminated by a mortgage foreclosure prior to July 1, 1914, and the tenant paid the rent reserved to the new landlord each month until January 30, 1915, when he paid the rent for that month and vacated the premises. In an action to recover rent for February, 1915, on the theory that there was an indefinite hiring which this section converted into a hiring until May 1, 1915, judgment was granted for plaintiff. *Held*, that there being no agreement except such as could be implied from payment of monthly rent the tenancy must be held to be a monthly one which terminated at the end of every month, and the judgment should be reversed and the complaint dismissed. *Kelley v. Osborn* (1915), 92 Misc. 201, 155 N. Y. Supp. 451, revd. (1916), 157 N. Y. Supp. 1100.

The above section has no application to a case where the tenancy is by the month. *Olson v. Schevlovitz* (1904), 91 App. Div. 405, 86 N. Y. Supp. 834.

See, generally, *Laimbeer v. Taller* (1889), 21 N. Y. St. Rep. 380, 4 N. Y. Supp. 588; *affd.* (1891), 125 N. Y. 725, 26 N. E. 756; *Spies v. Voss* (1890), 16 Daly 171, 9 N. Y. Supp. 532; *Jennings v. McCarthy* (1891), 40 N. Y. St. Rep. 678, 16 N. Y. Supp. 161; *Wilson v. Taylor* (1879), 8 Daly 253; *Galewski v. Applebaum* (1900), 32 Misc. 203, 65 N. Y. Supp. 694.

ARTICLE VIII.

CONVEYANCES AND MORTGAGES.

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§ 240. Definitions and use of terms.—1. The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee.

2. The term "conveyance," as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered.

3. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument, and is consistent with the rules of law.

4. The terms "estate" and "interest in real property" include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 205; originally revised from R. S., pt. 2, ch. 7, tit. 3, §§ 6, 7; R. S., pt. 2, ch. 1, tit. 5, §§ 1, 2; R. S., pt. 2, ch. 1, tit. 2, § 114.

References.—Other definitions in this chapter, Real Property Law, §§ 2, 290.

Omission of "heirs or assigns," does not limit estate. *Guernsey v. Guernsey* (1867), 36 N. Y. 267; *Terry v. Wiggins* (1872), 47 N. Y. 512; *Whitney v. Richardson* (1891), 59 Hun 601, 13 N. Y. Supp. 861; *Nichols v. N. Y. & E. R. R. Co.* (1854), 12 N. Y. 121; *Matter of Kirk v. Richardson* (1884), 32 Hun 434; *Crain v. Wright* (1889), 114 N. Y. 307, 21 N. E. 401.

A satisfaction is a "conveyance."—*Thomas v. Zahka* (1917), 99 Misc. 333, 338, 164 N. Y. Supp. 193.

Intent, as gathered from whole instrument. *Rose v. Hawley* (1890), 118 N. Y. 502, 23 N. E. 904; *Masterson v. Townshend* (1890), 123 N. Y. 458, 25 N. E. 928,

* So in original.

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10 L. R. A. 816; *Knowlton v. Atkins* (1892), 134 N. Y. 313, 31 N. E. 914; *Ramsay v. De Remer*, (1892), 65 Hun 212, 20 N. Y. Supp. 143; *Bennett v. Culver* (1884), 97 N. Y. 250; *Miner v. Brown* (1892), 133 N. Y. 308, 31 N. E. 24; *Bridger v. Pierson* (1871), 45 N. Y. 601; *Richards v. Crocker* (1892), 49 N. Y. St. Rep. 242, 20 N. Y. Supp. 954, *affd.* (1894), 143 N. Y. 631; *De Witt v. Elmira Transfer Ry. Co.* (1890), 5 Silv. 568, 9 N. Y. Supp. 149, *affd.* (1892), 134 N. Y. 495, 32 N. E. 42.

The conclusion as to the intent to be gathered from the whole instrument is one of law rather than of fact and a duty for the court and not for the jury. *Morris v. Ward* (1867), 36 N. Y. 587, 595. Intention is to be gathered from all the surrounding circumstances. *Blackman v. Striker* (1894), 142 N. Y. 555, 37 N. E. 484.

Intention to create a tenancy other than a tenancy in common must be given effect, if such intention can be gathered from the whole instrument, and is consistent with the rules of law. *Perrin v. Harrington* (1911), 146 App. Div. 292, 130 N. Y. Supp. 944.

Estate or interest in real property; what constitutes within the meaning of this section.—Growing grass and trees are interests in lands and so long as they remain annexed to the land and are neither actually nor in contemplation of law severed therefrom, they cannot be sold or transferred by parol; nor can any valid agreement for the sale thereof be made unless the agreement be in writing. *Bank v. Crary* (1847), 1 Barb. 542, 545; *Warren v. Leland* (1847), 2 Barb. 613, 618.

Hop roots when rotted in the ground constitute an interest in real property within this section. *Webster v. Zielly* (1868), 52 Barb. 482, 484.

§ 241. **Ancient conveyances abolished.**—The conveyance of real property by feoffment, with livery of seizin, or by fines, or common recoveries, is abolished.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 206; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 136.

§ 242. **When written conveyance necessary.**—An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, can not be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 207; originally revised from R. S., pt. 2, ch. 7, tit. 1, §§ 6, 7, as amended by L. 1860, ch. 322.

References.—When contract to lease or sell void, Real Property Law § 259. Sales of personal property, Personal Property Law, § 31. Sales of goods, Personal Property Law, § 85.

Contract of sale by life tenant does not bind remaindermen in joining therein, although it was executed with their approval. Mere proof of willingness of the remaindermen to sell their interest in connection with that of the life tenant does not establish a contract binding upon them. *Brustmann v. Motrie* (1907), 118 App. Div. 395, 103 N. Y. Supp. 541.

Easements can only be created by a deed or its equivalent. *Norton v. Ritter* (1907), 121 App. Div. 497, 106 N. Y. Supp. 129; *Babcock v. Utter* (1864), 1 Abb. Ct. App. Dec. 27, 36; *Day v. N. Y. Central Railroad Co.* (1860), 31 Barb. 548; *Pitkin v. L. I. R. R. Co.* (1847), 2 Barb. Ch. 221, 232; *Cayuga Ry. Co. v. Niles* (1878), 13 Hun 170.

An oral representation by a grantor that adjoining lands owned by him were subject to a restriction limiting the buildings thereon to private residences is void under the statute. *Norton v. Ritter* (1907), 121 App. Div. 497, 106 N. Y. Supp. 129.

The right to maintain a sewer through the land of another is an easement in realty and can only be acquired by a written conveyance. A verbal consent is a mere revocable license. *Fonda, Johnstown and Gloversville R. R. Co. v. Olmstead* (1903), 84 App. Div. 127, 81 N. Y. Supp. 1041.

An agreement to erect a dam upon the lands of another for a *permanent* purpose, must be in writing. *Mumford v. Whitney* (1836), 15 Wend. 380.

An oral agreement by a turnpike company with the life tenant of a farm to relieve him forever from liability to pay tolls upon his closing a private road is not a grant of an interest in lands so as to render it invalid. *Great Western Turnpike Co. v. Shafer* (1901), 57 App. Div. 331, 68 N. Y. Supp. 5, *affd.* (1902), 172 N. Y. 662, 65 N. E. 1121.

Partnership for dealing in real estate may be created by parol and the question whether the interest of a partner in such real estate shall for purposes of distribution be treated as realty or personalty is incidental to the relation of copartnership. If it be found that there was an intention for a conversion into realty the agreement does not therefore conflict with the spirit or the letter of this section. *Buckley v. Doig* (1907), 188 N. Y. 238, 80 N. E. 913, *affg.* (1906), 115 App. Div. 413, 100 N. Y. Supp. 869.

An agreement to form a partnership with respect to a specific parcel of land is not within the statute of frauds and need not be in writing. *Rauch v. Donovan* (1908), 126 App. Div. 52, 56, 110 N. Y. Supp. 690. But if such agreement also provides for the conveyance of real property from one person to another, or to the copartnership, it is not enforceable unless in writing. *Pounds v. Egbert* (1907), 117 App. Div. 756, 102 N. Y. Supp. 1079.

A partnership for the purpose of dealing in real estate may be created by an oral agreement, provided it does not involve the conveyance by one partner to another of any interest in the real estate itself, but contemplates that one partner shall take and give conveyances and all the other partners shall contribute to the common expense of labor and share in the profits and losses. *Bailey v. Weed* (1899), 36 App. Div. 611, 55 N. Y. Supp. 253.

A partnership agreement for the purchase of lands need not be in writing. *Traphagen v. Burt* (1876), 67 N. Y. 30; *Chester v. Dickerson* (1873), 54 N. Y. 1; *Hollister v. Simonson* (1899), 36 App. Div. 63, 55 N. Y. Supp. 372.

An agreement to share in the profits or losses of a contemplated speculation in real estate does not involve such an interest in the property as the statute requires to be in writing. *Babcock v. Read* (1889), 99 N. Y. 609, 1 N. E. 141; *Ostrander v. Snyder* (1893), 73 Hun 378, 26 N. Y. Supp. 263, *affd.* (1896), 148 N. Y. 757, 43 N. E. 988.

A parol partition of lands, owned by tenants in common, may be made, provided each party takes and retains exclusive possession of the portion allotted to him. *Taylor v. Millard* (1890), 118 N. Y. 244, 23 N. E. 376, 6 L. R. A. 667.

Evidence insufficient to establish a valid parol partition. *Sanger v. Merritt* (1892), 131 N. Y. 614, 30 N. E. 100.

A right in the nature of an easement cannot be created by a parol agreement

for the partition of lands. *Taylor v. Millard* (1890), 118 N. Y. 244, 23 N. E. 376, 6 L. R. A. 667.

Agreements with respect to boundary lines.—An agreement made in respect to disputed boundary lines is not within the statute; but where the line is already well known and established, an agreement to change it must be in writing. *Davis v. Townsend* (1851), 10 Barb. 333, 346.

Declarations of a grantor before the execution of a deed tending to establish a boundary other than that made by the deed are not competent, as they might effect a conveyance of land by parol in contravention of the statute. *Harris v. Oakley* (1891), 130 N. Y. 1, 28 N. E. 530.

An agreement to attend a foreclosure sale of real estate and to bid for the premises and to take the deed and thereafter reconvey such premises to the promisee, should be in writing within the meaning of this section. *Lathrop v. Hoyt* (1849), 7 Barb. 59, 63; *Bauman v. Holzhausen* (1882), 26 Hun 505; *Ryan v. Dox* (1866), 34 N. Y. 307.

An agreement by a mortgagee to sell mortgaged premises and after deducting the amount due to himself to pay the surplus of such sale to the mortgagor need not be in writing. *Hess v. Fox* (1833), 10 Wend. 436.

Agreement to confess judgment.—An executory agreement on the one side to confess a judgment and on the other to acquire the title to land by redemption under the statute and hold it in trust upon the condition stated is not an agreement for sale of land within this section. *Wood v. Rabe* (1884), 96 N. Y. 414, 421.

A license to enter upon lands of another and do a particular act or series of acts without possessing any interest in the land need not be in writing. *Mumford v. Whitney* (1836), 15 Wend. 380.

Consent to laying out road.—The consent of the owner of the land to the laying out of a private road thereon pursuant to a constitutional provision need not be in writing. *Embury v. Conner* (1850), 3 N. Y. 511, 518. A parol consent to the laying out of a road through a building is valid. *People v. Goodwin* (1851), 5 N. Y. 658.

A parol lease for more than one year is void. *Crouse v. Frothingham* (1885), 97 N. Y. 106, 112; *Talamo v. Spitzmiller* (1890), 120 N. Y. 37, 41, 23 N. E. 980, 8 L. R. A. 221. An oral lease for a year, with the privilege of another year, if the tenant so elects, is a hiring for more than a year and is, therefore, void under this section. *Hess v. Martin* (1901), 36 Misc. 541, 73 N. Y. Supp. 946; *Wiles v. Cohen* (1916), 158 N. Y. Supp. 150.

Where a tenant enters and pays rents under a written lease for four years, and the landlord fails to perform his covenants, a subsequent parol agreement may be good as a new contract for one year and may inure as a tenancy from year to year. *Blumenthal v. Bloomingdale* (1885), 100 N. Y. 558, 3 N. E. 292.

A parol lease of land for one year to commence at a future day is valid because the provisions of the statute, relating to contracts "not to be performed within a year" has no application to contracts concerning lands, but only applies to transactions respecting personal property. *Ward v. Hasbrouck* (1902), 169 N. Y. 407, 62 N. E. 434; *Taggard v. Roosevelt* (1853), 8 How. Pr. 141; *Young v. Dake* (1851), 5 N. Y. 463. See *Croswell v. Crane* (1849), 7 Barb. 191. The time between the making of a lease and its commencement in possession, is no part of the term granted by it. *Allen v. Devlin* (1860), 7, 19 N. Y. Super (6 Bosw.) 1, 7.

An agreement by a landlord with a tenant to pay the cost of structural changes, made in order to avoid the filing of violations and subsequent litigation, is not within the statute of frauds. *Heyland v. Mehler-Fulton Co.* (1915), 153 N. Y. Supp. 918.

A parol assignment of a five-year written lease is void. *Moskowitz v. Eastern Brewing Co.* (1909), 117 N. Y. Supp. 1017.

The surrender of a lease for more than one year is required to be in writing. *Volkening v. Raymond* (1915), 91 Misc. 53, 154 N. Y. Supp. 145.

This section requiring the surrender of a lease for more than one year to be in writing and signed by the tenant does not apply if there be an actual surrender of the leased premises and an acceptance. *Baldwin v. Cohen* (1909), 132 App. Div. 87, 116 N. Y. Supp. 510; *Zipser v. Dunst* (1915), 153 N. Y. Supp. 394; A lease, with more than a year to run, may be surrendered without writing, if accepted, but an agreement to surrender at a future time should be in writing. *Kelly v. Noxon* (1892), 64 Hun 281, 18 N. Y. Supp. 909.

An unexpired term for a year in a lease for three years may be surrendered by parol. *Smith v. Devlin* (1861), 23 N. Y. 363.

An agreement for the surrender of a lessee's term exceeding one year is not affected by the statute when it is surrendered by an act or operation of law. *Vandekar v. Reeves* (1886), 40 Hun 430. And a surrender by act or operation of law exists only where the new estate accepted by the lessee is created in writing. *Lawrence v. Brown* (1851), 5 N. Y. 394, 404.

This section has reference to the actual estate or interest which is to be surrendered. When it excepts leases for one year it refers to the estate, or interest of the tenant in the estate for a year, and not to the form of the lease by which that interest or estate is created or secured. The unexpired term for a year in a lease for three years may be surrendered by parol. *Smith v. Devlin* (1861), 23 N. Y. 363.

An agreement by a lessee for a term of years with his lessor, that the premises shall be surrendered on the first day of May of the last year of the term, is not rendered invalid by this section. *Allen v. Devlin* (1860), 19 N. Y. Super (6 Bosw.) 1, 7.

Written authority of agent.—In order to make a lease executed by an agent for more than one year binding upon his principal, the agent must have written authority. A landlord by receiving the rent without knowledge that the term of the lease was for more than one year does not ratify the lease. *Larkin v. Radosta* (1907), 119 App. Div. 515, 104 N. Y. Supp. 165; *Coudert v. Cohen* (1890), 118 N. Y. 309, 23 N. E. 298, 7 L. R. A. 69.

One having no written authority to act as agent for a landlord cannot make a lease for five years. *Lawrence v. Goodstein* (1915), 91 Misc. 19, 154 N. Y. Supp. 229.

Agent must have written authority in order to execute lease for more than one year. *Finkelstein v. Fabyik* (1907), 56 Misc. 589, 107 N. Y. Supp. 67.

Agent of owner must have authority in writing to surrender a lease for more than a year. *Ramsay v. Wilkie* (1891), 13 N. Y. Supp. 554.

Lease by husband of owner.—Where the husband of the owner of real property makes a lease of it in writing and signs the lease in his own name and the wife ratifies and confirms it by receiving the rent with knowledge of the facts, she may not afterwards repudiate the lease and treat the tenancy as a tenancy from month to month. *Matter of Di Marti* (1911), 72 Misc. 148, 129 N. Y. Supp. 81.

Where a husband leases his wife's real estate without the authority required by this section and section 259, the lease is void, and the fact that she accepted rent due thereunder and indorsed checks received in payment for the rent does not constitute a legal ratification of adoption of the lease. *Carman v. Fox* (1914), 86 Misc. 197, 149 N. Y. Supp. 213.

A lease, executed by the husband of the owner of land in her presence with her knowledge and consent, and she witnesses his signature as landlord, is not void

on the theory that it was executed without written authority. *Shimer v. Ronk* (1910), 139 App. Div. 137, 123 N. Y. Supp. 479.

Signature of lease.—A letter written by a co-tenant on behalf of himself and the other owners of the property, enclosing a lease for five years, does not, although the lease is signed by the lessee, create a lease; it is not a signing by the lessors within the meaning of the statute. *Jewett v. Griesheimer* (1905), 100 App. Div. 210, 91 N. Y. Supp. 654.

A lease, having the lessor's separate name printed at the end thereof, followed by a signature which is unexplained, is void under the statute. *Riviera Realty Co. v. Henry* (1913), 144 N. Y. Supp. 790.

A written lease, signed by the lessee, may be valid as between the lessor and the lessee who has occupied under it, although not signed by the lessor. *Evans v. Conklin* (1893), 71 Hun 536, 24 N. Y. Supp. 1081. *Loughran v. Smith* (1877), 11 Hun 311, *affd.* (1878), 75 N. Y. 205.

A subsequent verbal agreement is not sufficient to vary the terms of a lease under seal. *Smith v. Ken* (1884), 33 Hun 567, 572, *affd.* (1888), 108 N. Y. 31, 15 N. E. 70.

A parol denial or disclaimer by the tenant of his landlord's title and the assertion that he owns the land in fee will not work a forfeiture. *Delancey v. Ganong* (1853), 9 N. Y. 9.

Interest of lessee in sub-lease.—The estate or interest of a lessee of real property under a sub-lease made by him to third persons, for a term exceeding one year, with a reservation of a right of re-entry for breach of covenant, is an estate or interest in land, within the meaning of this section. *Agate v. Gignoux* (1863), 24 N. Y. Super. (1 Rob.) 278.

For effect of verbal assignment of written lease see *Crowe v. Bauman* (1911), 190 Fed. 399; see S. C. (1912), 196 Fed. 965.

A contract for a pew in a church for more than a year must be in writing. *First Baptist Church of Ithaca v. Bigelow* (1836), 16 Wend. 28.

Declaration of trust.—Where the will of testatrix recited that whereas it was the intention of her deceased husband, by whose will she inherited all her estate, that upon her decease the "residue and remainder" of his estate should go to his children, and that she so desired it, there is no declaration of trust of the property received by her from him, within the meaning of this section, as the will failed to show that she took the property under any promise express or implied to carry out his intention, but that in giving it to the children she was carrying out his wishes. *Gabriel v. Gabriel* (1913), 79 Misc. 346, 139 N. Y. Supp. 778, *affd.* (1899), 160 App. Div. 901, 144 N. Y. Supp. 1117.

Trusts.—Instrument creating must be in writing. *Corse v. Leggett* (1857), 25 Barb. 389, 394; *McCahill v. McCahill* (1893), 71 Hun 221, 223, 25 N. Y. Supp. 221; *McArthur v. Gordon* (1889), 51 Hun 511, 4 N. Y. Supp. 584, *modf.* (1891), 126 N. Y. 597, 27 N. E. 1033, 12 L. R. A. 667; *Wright v. Douglas* (1853), 7 N. Y. 564, 568; *Bates v. L. M. Co.* (1891), 130 N. Y. 200, 29 N. E. 102; *Dillage v. Greenough* (1871), 45 N. Y. 438, 445; *Follett v. Badeau* (1882), 26 Hun 253, 256.

A trust must be declared by a deed or conveyance in writing. *Ludlow v. Rector, etc., of Saint John's Church* (1911), 144 App. Div. 207, 130 N. Y. Supp. 679, *revd.* (1913), 207 N. Y. 689, 100 N. E. 892.

Where a husband purchases lands and has the title conveyed to his wife, he cannot compel the specific performance of an oral promise made by her to reconvey. A trust was not created in favor of the husband by such a promise since a trust can only be created by a conveyance in writing. *McCartney v. Titsworth* (1907), 119 App. Div. 547, 104 N. Y. Supp. 45.

A trustee in bankruptcy cannot maintain an action to compel the conveyance to him of certain land which the bankrupt, four years before the adjudication in

bankruptcy, while entirely solvent conveyed to her daughter upon an alleged oral agreement that the beneficial interest in the lands conveyed should remain in the bankrupt, and that she should be entitled to a re-conveyance thereof upon demand, unless he is able to produce the written declaration of the trust as required in this section. *Hill v. Warsawski* (1904), 93 App. Div. 198, 87 N. Y. Supp. 551.

Creation of trust by parol.—Where real property was transferred by an illiterate woman to her pastor upon the verbal understanding that if her son should ever return, the pastor would convey the property to him, and upon the subsequent return of the son he brought an action against the heirs-at-law of the pastor who had succeeded to the legal title of the property to enforce the verbal agreement, the court will, because of the confidential relation existing between the parties, and the presumption of undue influence arising therefrom, hold that the pastor became a trustee of the property *ex maleficio*, and that, therefore, the parol trust was not within the condemnation of the above section and was, therefore, enforceable. *McClellan v. Grant* (1903), 83 App. Div. 599, 82 N. Y. Supp. 208, *affd.* (1905), 181 N. Y. 581, 74 N. E. 1119.

An oral trust may be impressed upon real estate against the trustee when the proof of its existence is clear. *Lennon v. Bradley & Currier Co.* (1899), 27 Misc. 452, 59 N. Y. Supp. 277, *affd.* (1899), 46 App. Div. 621, 61 N. Y. Supp. 370.

Trusts arising by implication or operation of law are not affected by this section. See *Foot v. Foot* (1870), 58 Barb. 258, 262. And may be proved by parol. *Norton v. Mallory* (1874), 1 Hun 499, *affd.* (1875), 63 N. Y. 434.

Section cited.—*Nesbitt v. Thompson* (1916), 93 Misc. 251, 256, 157 N. Y. Supp. 166. Section cited upon question of authority or consent to convey. *Nestell v. Hart* (1911), 202 N. Y. 280, 286, 95 N. E. 703.

§ 243. Grant of fee or freehold.—A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or incumbrancer until so acknowledged.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 208; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 137.

Revisers' note.—Unchanged in substance, except that the provision that a grant must be under seal is omitted. See *Voorhees v. Presb. Ch.* (1853), 17 Barb. 103, 108; *Roggen v. Avery* (1872), 63 Barb. 65, *affd.* (1875), 65 N. Y. 592.

An easement to carry water through a pipe across the lands of another for the benefit of the dominant tenement is an interest "in fee or of a freehold estate," within the meaning of this section. *Nellis v. Munson* (1888), 108 N. Y. 453, 15 N. E. 739. And a written instrument, giving the privilege of conveying water by pipes from the land of one party to the land of another, if not acknowledged or witnessed, as provided by this section, is not effective against subsequent purchasers, including the grantor's devisees. *Clark v. Strong* (1905), 105 App. Div. 179, 93 N. Y. Supp. 514.

Standing trees form a part of the freehold within the meaning of this section. *Goodyear v. Vosburgh* (1869), 57 Barb. 243, 247; see also *Warren v. Leland* (1848), 2 Barb. 613.

No seal required.—*Fitzpatrick v. Graham* (1903), 122 Fed. 401.

A subscribing witness is one who was present when the instrument was executed,

and who at that time subscribed his name to it as a witness of the execution. He attests the delivery as well as the signing. In this respect, it goes further than the acknowledgement. *Hollenback v. Fleming* (1844), 6 Hill 303.

A notary public, who takes the acknowledgment of a deed outside his own county, and signs as notary only, and at the end of the certificate of acknowledgment, cannot be regarded as a subscribing witness. *Mut. L. Ins. Co. v. Corey* (1889), 54 Hun 493, 7 N. Y. Supp. 939, 942, revd. on other grounds (1892), 135 N. Y. 326, 31 N. E. 1095.

The attesting witness may have been previously a stranger to the grantor. *Goodhue v. Berrien* (1845), 2 Sandf. Ch. 633.

The reason for an attestation by witnesses fails when the deed is duly acknowledged. *Commissioners of the U. S. Deposit Fund v. Chase* (1849), 6 Barb. 37, 42.

Purchaser or incumbrancer.—The word “purchaser” refers to any purchaser and not only to bona fide purchasers without notice. *Chamberlain v. Spargur* (1881), 86 N. Y. 603; *Nellis v. Munson* (1888), 108 N. Y. 453, 15 N. E. 739. It means one who derives the title by purchase from the grantor in the unacknowledged and unattested deed, or from one who himself is mediately or immediately a purchaser from such grantor. *Strough v. Wilder* (1890), 119 N. Y. 530, 535, 25 N. E. 1057, 7 L. R. A. 555.

A mortgagee who purchase at a foreclosure sale under his mortgage, which is valid in equity, though defectively acknowledged, is a “purchaser or incumbrancer” within the meaning of this section. *Mut. L. Ins. Co. v. Corey* (1889), 54 Hun 493, 7 N. Y. Supp. 939, 942, revd. on other grounds (1892), 135 N. Y. 326, 31 N. E. 1095.

A deed acknowledged or attested by a witness takes priority over a subsequent deed executed by the same grantors, although the later deed is first recorded if the grantee therein had actual knowledge of the first deed and is not a purchaser in good faith. A deed which has not been acknowledged or attested does not take effect as against a subsequent purchaser, although the latter has actual notice thereof and is not a purchaser in good faith and for value. *Dunn v. Dunn* (1912), 151 App. Div. 800, 136 N. Y. Supp. 282.

Title under an unacknowledged and unattested deed is good as between the parties, and also against the heirs of the grantor or one claiming under them. *Strough v. Wilder* (1890), 119 N. Y. 530, 535, 23 N. E. 1057, 7 L. R. A. 555; *Hill v. Bartholomew* (1893), 71 Hun 453, 455, 24 N. Y. Supp. 944; *Wood v. Chapin* (1856), 13 N. Y. 509.

Grantor under unattested and unacknowledged deed; conveyance to another.—One who has signed an unattested and unacknowledged deed, may, nevertheless, convey to another by deed duly executed, and this, whatever the purpose or consideration of the second deed, and although the grantee named therein had notice of the prior deed, and although the prior deed contained covenants of warranty, such covenants not operating by way of estoppel. *Chamberlain v. Spargur* (1881), 86 N. Y. 603.

Suit to have defective acknowledgment corrected.—A suit in equity lies to compel a grantor, who has contracted to convey a fee by warranty deed to reacknowledge a deed which was defective in that the venue of the acknowledgment was blank. *Leavitt v. Thornton* (1908), 123 App. Div. 683, 108 N. Y. Supp. 162.

An equitable right of redemption is not within this section. *Stoddard v. Whiting* (1871), 46 N. Y. 627, 633.

Presumption of delivery.—The presumption that an instrument was executed and delivered at the time it bears date does not hold in respect to deeds in fee, unat-

tested and unacknowledged. *Genter v. Morrison* (1857), 31 Barb. 155, 158; *Elsev v. Metcalf* (1845), 1 Denio 323.

§ 244. **When grant takes effect.**—A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 209; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 138.

Delivery and acceptance.—The delivery of a deed is essential to the transfer of title, and there can be no delivery without an acceptance by the grantee. *Ten Eyck v. Whitbeck* (1898), 156 N. Y. 341, 352, 50 N. E. 963; *Jackson ex dem. Eames v. Phipps* (1815), 12 Johns. 418; *Koehler v. Hughes* (1896), 148 N. Y. 507, 42 N. E. 1051. Delivery is essential to the vesting of a legal title. *Mitchell v. Bartlett* (1873), 51 N. Y. 447.

A mortgage or deed of land only takes effect from the time of its delivery. *Schafer v. Reilly* (1872), 50 N. Y. 61, 66; *Jackson ex dem. Hopkins v. Leek* (1834), 12 Wend. 105.

It is essential to the validity of an assignment that the assignor should part with the instrument by actual delivery either to the assignee or his agent. *McIlhargy v. Chambers* (1889), 117 N. Y. 532, 23 N. E. 561.

Delivery to third party.—Where a deed, after execution by the grantor, is handed to a third party, to be delivered to the grantee, upon the happening of a future event, the title does not pass, until delivery, when it vests by relation, as of the time when the deed was left for delivery, with such third person. *Hathaway v. Payne* (1865), 34 N. Y. 92. See also *Rosseau v. Bleau* (1892), 131 N. Y. 177, 183, 30 N. E. 52; *Diefendorf v. Diefendorf* (1892), 132 N. Y. 100, 30 N. E. 375.

But where the owner signs, seals and acknowledges a deed and places it in the hands of a third party to deliver to the grantee after her death, or to return the same to her at any time she may so desire, a delivery thereof by the depositor to the grantee after the death of the grantor is ineffectual to pass the title to the lands therein described. *Burnham v. Burnham* (1908), 58 Misc. 385, 111 N. Y. Supp. 252, *affd.* (1909), 132 App. Div. 937, 116 N. Y. Supp. 1132, *affd.* (1910), 199 N. Y. 592, 93 N. E. 1117.

Effect of delivery in escrow.—See *Blewitt v. Boorum* (1894), 142 N. Y. 357, 363, 37 N. E. 119.

Presumption of delivery.—While the presumption is that a deed was delivered and accepted at its date, it is a presumption that must yield to opposing evidence. *Ten Eyck v. Whitbeck* (1898), 156 N. Y. 341, 352, 50 N. E. 963; *Purdy v. Coar* (1888), 109 N. Y. 448, 17 N. E. 352.

The presumption of the delivery of a deed cannot arise from an unauthorized record thereof, shown to have originated in a mistake, and made half a century after its original was drawn. *Cussack v. Tweedy* (1891), 126 N. Y. 81, 26 N. E. 1033.

Evidence of delivery.—The possession of a deed by the grantee is *prima facie* evidence of delivery, when there is nothing to impeach the bona fides of his possession. *Strough v. Wilder* (1890), 119 N. Y. 530, 23 N. E. 1057, 7 L. R. A. 555. *Hoffman v. Hoffman* (1896), 6 App. Div. 84, 39 N. Y. Supp. 494.

The question of delivery, involving as it does acceptance, is always one of intention, and where there is a conflict in the evidence, it becomes a question of fact to be determined by a jury. *Ten Eyck v. Whitbeck* (1898), 156 N. Y. 341, 352, 50 N. E. 963.

Taking effect of an estate in futuro.—A conveyance of lands to E for life, with

a proviso that, should the estate terminate during the lifetime of E, remainder to go to N for the residue of E's life, and further providing that on the death of E the remainder should go to him and his heirs, vests E with both the life estate and the remainder; and the grantee becomes seized of the remainder upon the delivery of the deed, his estate commencing *in presenti*, though to come into possession *in futuro*. *Ray v. Jaeger* (1909), 131 App. Div. 294, 115 N. Y. Supp. 737.

§ 245. Estate which passes by grant or devise.—A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or incumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or incumbrancer in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 210; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 143, 144.

The effect of the provision that no greater interest shall pass by a grant or conveyance than the grantor himself procured or could lawfully convey at the time, although it undertakes to convey a larger interest, was simply to do away with the common-law doctrine whereby a feoffment by a life tenant or by a person in possession of lands, and other common-law modes of assurance by fine and delivery, had the power of creating an estate in fee, divesting the title of the true owner. *Thompson v. Simpson* (1891), 128 N. Y. 270, 28 N. E. 627.

Estate conveyed.—*Blackman v. Striker* (1894), 142 N. Y. 555, 37 N. E. 484; *De Witt v. Elmira Transfer R. R. Co.* (1892), 134 N. Y. 495, 32 N. E. 42; *Crain v. Wright* (1889), 114 N. Y. 307, 21 N. E. 401; *Heath v. Barmore* (1872), 50 N. Y. 302; *Terry v. Wiggins* (1872), 47 N. Y. 512; *Byrnes v. Baer* (1881), 86 N. Y. 210; *Sage v. Cartwright* (1853), 9 N. Y. 49; *Hinckel v. Stevens* (1897), 17 App. Div. 279, 280, 45 N. Y. Supp. 678; *Sparrow v. Kingman* (1848), 1 N. Y. 242, 248.

A sheriff's conveyance is operative to pass whatever interest the judgment debtor had. *Beach v. Hollister* (1875), 3 Hun 519, 5 T. & C. 568, 570. And is protected by the recording act. *Hetzel v. Barber* (1877), 69 N. Y. 1, 9.

Title of mortgagee; history of law.—History of the law whereby title of mortgagee changed from that of actual legal ownership to a fiction whereby the only strict legal right he had left was to collect the debts secured by the mortgage, discussed. *Barson v. Mulligan* (1908), 191 N. Y. 307, 84 N. E. 75, 16 L. R. A. (N. S.) 151, revg. (1907), 120 App. Div. 879, 105 N. Y. Supp. 1106.

Rights of subsequent granters of mortgaged property under void foreclosure proceedings.—The purchaser at a mortgage sale under an attempted statutory foreclosure, void as against the mortgagor for want of notice, becomes assignee of the mortgagee, and each subsequent grantee becomes in turn assignee thereof. *Ketcham v. Deutsch* (1914), 211 N. Y. 85, 88, 105 N. E. 85.

Section cited.—*Stoddard v. Weston* (1889), 3 Silv. 13, 6 N. Y. Supp. 34.

§ 246. Certain deeds declared grants.—Deeds of bargain and sale, and of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 211; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 142.

Deeds of bargain and sale.—What are. See *Long Island R. R. Co. v. Conklin* (1864), 29 N. Y. 572; *Wilhelm v. Wilken* (1896), 149 N. Y. 447, 44 N. E. 82, 32 L. R. A. 370, affg. (1894), 75 Hun 552, 27 N. Y. Supp. 853; *Bucklin v. Bucklin* (1864), 1 Abb. Ct. App. Dec. 242, 247.

§ 247. **Conveyance by tenant for life or years of greater estate than possessed.**—A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 212; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 145.

Application.—See *Thompson v. Simpson* (1891), 128 N. Y. 270, 28 N. E. 627; *Christie v. Gage* (1877), 71 N. Y. 189, 193; *Newcomb v. Lush* (1895), 84 Hun 254, 32 N. Y. Supp. 526, affd. (1898), 155 N. Y. 687, 50 N. E. 1120; *Jackson ex dem. Swartwout v. Johnson* (1825), 5 Cow. 74, 96; *Moore v. Littel* (1869), 41 N. Y. 66, 68; *Sparrow v. Kingman* (1848), 1 N. Y. 242, 248.

A lease by a life tenant cannot extend for a longer period than the termination of his own estate. *Mulligan v. Cox* (1899), 26 Misc. 709, 711, 56 N. Y. Supp. 797.

§ 248. **Effect of conveyance where property is leased.**—An attornment to a grantee is not requisite to the validity of a conveyance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 213; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 146.

Attornment by the tenant is abolished by this section. *Moffatt v. Smith* (1850), 4 N. Y. 126, 128; *O'Donnell v. McIntyre* (1885), 37 Hun 623, 625, affd. (1890), 118 N. Y. 156, 23 N. E. 455; *Lang v. Everling* (1893), 3 Misc. 530, 534, 23 N. Y. Supp. 329.

§ 249. **Covenants in mortgages.**—A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment has not been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 214; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 139.

Payment of deficiency.—When liability arises. See *Mack v. Austin* (1884), 95 N. Y. 513; *Spencer v. Spencer* (1884), 95 N. Y. 353; *Howe v. Fisher* (1848), 2 Barb. Ch. 559; *Gaylord v. Knapp* (1878), 15 Hun 87; *Patrick v. Underwood* (1896), 17 Misc. 646, 40 N. Y. Supp. 193; *Severance v. Griffith* (1870), 2 Lans. 38, 40; *Coleman v. Van Rensselaer* (1873), 44 How. Pr. 368, 371.

Admission of indebtedness equivalent to covenant.—An unqualified admission of indebtedness by the mortgagor has been held equivalent to an express covenant. But the admission must be made in unequivocal terms, and will not be inferred from the fact that the mortgagor intended by executing a mortgage, to secure the

payment of some debt due to the mortgagee. *Smith v. Rice* (1884), 12 Daly 307, 310.

Action on debt.—The absence of a covenant or bond will not defeat an action on the debt when proved by competent evidence, parol or written; but an action for the mortgage debt cannot be sustained by the production of the mortgage only. *Demond v. Crary* (1882), 9 Fed. 750.

§ 250. Mortgages on real property inherited or devised.—Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the mortgage out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 215; originally revised from R. S., pt. 2, ch. 1, tit. 5, § 4.

References.—Heirs and devisees liable for debts of decedent to extent of land inherited or devised, Code Civ. Pro. § 1843; action to enforce liability, Id. §§ 1844–1854.

Application and effect.—This section is applicable to intestate estates as well as to those cases in which the decedent has disposed of his property, or a part of it by will. *House v. House* (1843), 10 Paige 158, 164. It applies to the heirs and personal representatives, but it has no effect upon the direct liability of the heirs to the creditor. *Roosevelt v. Carpenter* (1858), 28 Barb. 426, 429; *Hauselt v. Patterson* (1889), 51 Hun 321, 22, 4 N. Y. Supp. 772, *affd.* (1891), 124 N. Y. 349, 26 N. E. 937.

The section applies to cases where the same persons take the realty and personalty as a blended fund. If the legatee chooses to apply his personalty to the satisfaction of the mortgage he benefits his real estate *pro tanto*. *Matter of Livingston* (1896), 1 App. Div. 568, 37 N. Y. Supp. 463.

No reference is made to a mortgage which is simply kept outstanding as a muniment of title. It only refers to a mortgage which is an actual lien upon the property, and which it was the intention of the owner of the fee to keep outstanding as such. *Browne v. Perris* (1889), 7 N. Y. Supp. 172, *affd.* (1890), 56 Hun 601, 11 N. Y. Supp. 97.

A mortgage given to secure indorsements is not within the intent of this section and should be paid by the executor of the deceased mortgagor out of the personal estate. *Cochrane v. Hawver* (1889), 54 Hun 556, 7 N. Y. Supp. 907. Thus, a mortgage by a partner of his individual real estate to secure the payment of the notes of his firm, is not within the meaning of this section. *Robinson v. Robinson* (1869), 1 Lans. 117, 120.

In the case of an unpaid purchase-money mortgage, the heir or devisee is entitled to have the same paid out of the personal property, although a promissory note had been given by the testator, creating an equitable mortgage. *Wright v. Holbrook* (1865), 32 N. Y. 587.

The lien of a local assessment bears a very close analogy to that of a mortgage upon land that has descended to the heir or passed to a devisee, and the real estate passes burdened with the obligation to pay such assessment. *Matter of Hun* (1895), 144 N. Y. 472, 478, 39 N. E. 376. But the rule of the common law remains unchanged as to taxes and assessments levied and confirmed before the death of the testator. *Matter of Noyes* (1885), 3 Dem. 369, 371.

Liability of heirs or devisees.—The liability of the heir or devisee to pay the

mortgage out of his own property should be measured by and not exceed that which descended to him from his ancestor. *Hauselt v. Patterson* (1891), 124 N. Y. 349, 356, 26 N. E. 937.

Under this section a devisee of real property subject to a mortgage is liable for the debts of the decedent to the extent of the value of the property devised; but an express direction to the executor to pay the mortgage out of the decedent's estate relieves the devisee from the liability imposed by the statute and makes it the duty of the executors to pay the mortgage, and the amount thereof should be deducted from the assets of the estate in ascertaining its value for the purposes of the transfer tax. *Matter of Hunt* (1916), 97 Misc. 233, 160 N. Y. Supp. 1115.

The heirs or devisees are primarily liable while the estate of the deceased mortgagor is only secondary liable, and the estate, having paid the mortgage on demand, may recover from the heirs or devisees. *Hauselt v. Patterson* (1889), 51 Hun 321, 323, 4 N. Y. Supp. 772, *affd.* (1891), 124 N. Y. 349, 26 N. E. 937. See also *Johnson v. Corbett* (1844), 11 Paige 265, 269; *Halsey v. Reed* (1842), 9 Paige 446, 454; *Erwin v. Loper* (1871), 43 N. Y. 521, 525. Mortgaged premises are primarily liable. *Olmstead v. Latimer* (1896), 9 App. Div. 163, 41 N. Y. Supp. 44, *mod.* (1899), 158 N. Y. 313, 53 N. E. 5, 43 L. R. A. 685.

See, generally, *Sutherland v. Rose* (1866), 47 Barb. 144, 151; *Murray v. Fox* (1886), 39 Hun 108, 112, *affd.* (1887), 104 N. Y. 382, 10 N. E. 864; *Murdock v. Waterman* (1895), 145 N. Y. 55, 65, 39 N. E. 829, 27 L. R. A. 418; *Matter of Kene* (1894), 8 Misc. 102, 29 N. Y. Supp. 1078; *Pease v. Egan* (1892), 131 N. Y. 262, 269, 30 N. E. 102; *Van Vechten v. Keator* (1875), 63 N. Y. 52, 56; *Matter of Roberts* (1911), 72 Misc. 625, 132 N. Y. Supp. 396; *Matter of Stiles* (1909), 64 Misc. 658, 120 N. Y. Supp. 714.

Express direction by will.—An express direction in the will of the testator may throw the burden of mortgage debts upon the personal estate. Any provision which clearly expresses that intent is sufficient. *Rapalye v. Rapalye* (1857), 27 Barb. 615, 620; *Matter of Hopkins* (1890), 57 Hun 9, 11, 10 N. Y. Supp. 264. See also *Moseley v. Marshall* (1860), 22 N. Y. 200, *revg.* (1858), 27 Barb. 42; *In re Williams* (1853), 1 Redf. 208, 211; *Molyan v. Griffith* (1832), 3 Paige 402. The express direction in a will, referred to in the statute, must be clear and definite, a mere general provision is not sufficient. *Taylor v. Wendel* (1857), 4 Bradf. 324, 330. The following cases hold that the will contained an "express direction," within the meaning of this section. *Alexander v. Powell* (1884), 3 Dem. 152; *Wells v. Wells* (1892), 30 Abb. N. C. 225, 24 N. Y. Supp. 874.

A general direction in a will to executors "to pay all just and legal demands against his estate," is insufficient to charge the personal estate with mortgage debts. *Carpenter v. Carpenter* (1892), 131 N. Y. 101, 108, 29 N. E. 1013.

Where a will directs an executor to pay a mortgage out of the proceeds of certain property and apply the balance to certain legacies, the mortgage must be paid in full without regard to whether the assets remaining are sufficient to pay the legacies in full. *In re Hopkins* (1890), 57 Hun 9, 10 N. Y. Supp. 264.

Enforcement of payment.—A mortgage creditor is not compelled by this section to resort to the land for payment in the first instance, but may either foreclose the mortgage or resort to the personal property. *Rice v. Harbeson* (1873), 2 T. & C. 4, 8, *affd.* (1876), 63 N. Y. 493; *Roosevelt v. Carpenter* (1858), 28 Barb. 426.

Sufficiency of complaint in an action for a deficiency judgment against an executor or administrator. *Glacius v. Fogel* (1882), 88 N. Y. 434, 442.

§ 251. **Covenants not implied.**—A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 216; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 140.

Application.—Does not apply to leases for years. *Graves v. Berdan* (1863), 26 N. Y. 498; *Burr v. Stenton* (1871), 43 N. Y. 462; *Vernam v. Smith* (1857), 15 N. Y. 328; *Franklin v. Brown* (1889), 118 N. Y. 110, 23 N. E. 126, 6 L. R. A. 770; *Moffat v. Strong* (1861), 22 N. Y. Super. (9 Bosw.) 57, 76. Such a lease is a mere chattel interest, and not a conveyance of land in the ordinary sense of the term. *Tone v. Brace* (1845), 11 Paige 566. But applies to leases in perpetuity. *Carter v. Burr* (1862), 39 Barb. 59, 65.

Covenants are not implied in a warranty deed. *Garlock v. Lane* (1853), 15 Barb. 359, 363. Or in a quit claim deed. *Bradt v. Church* (1886), 39 Hun 262, 264, affd. (1888), 110 N. Y. 537, 18 N. E. 357; *Pierce v. Fuller* (1885), 36 Hun 179, 181. Covenant of title is not implied in a mortgage. *Stoddard v. Weston* (1889), 25 N. Y. St. Rep. 922, 6 N. Y. Supp. 34. There is no implied covenant to repair in a lease. *Lynch v. Speed* (1889), 23 N. Y. St. Rep. 90, 4 N. Y. Supp. 556. See also *Sandford v. Travers* (1869), 40 N. Y. 140, 143; *Bliss v. Greeley* (1871), 45 N. Y. 671, 674; *Burwell v. Jackson* (1854), 9 N. Y. 535, 541; *Clark v. Post* (1889), 113 N. Y. 17, 26, 20 N. E. 573; *Coffin v. City of Brooklyn* (1889), 116 N. Y. 159, 22 N. E. 227; *Leggett v. Mut. Life Ins. Co.* (1873), 53 N. Y. 394; *Read v. Erie R. R. Co.* (1884), 97 N. Y. 341; *Mayor v. Mable* (1855), 13 N. Y. 151; *Ramsey v. Wandell* (1884), 32 Hun 482, 485; *Murray v. Smith* (1853), 1 Duer 412, 427.

§ 252. **Lineal and collateral warranties abolished.**—Lineal and collateral warranties, with all their incidents, have been abolished; but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property descended or devised to them, in the cases and in the manner prescribed by law.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 217; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 141.

See *Trolan v. Rogers* (1895), 88 Hun 422, 34 N. Y. Supp. 836; *Hill v. Resegen* (1852), 17 Barb. 162, 168.

§ 253. **Construction of covenants in grants of freehold interests.**—In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. *Seizin.*—A covenant that the grantor “is seized of the said premises (described) in fee simple, and has good right to convey the same,” must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. *Quiet enjoyment.*—A covenant that the grantee “shall quietly enjoy the said premises,” must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the

grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. *Freedom from incumbrances.*—A covenant “that the said premises are free from incumbrances,” must be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

4. *Further assurance.*—A covenant that the grantor will “execute or procure any further necessary assurance of the title to said premises,” must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. *Warranty of title.*—A covenant that the grantor “will forever warrant the title” to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors or assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. *Grantor has not incumbered.*—A covenant that the grantor “has not done or suffered anything whereby the said premises have been incumbered,” must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 218; originally revised from L. 1890, ch. 475.

Construction of covenants.—A covenant in a deed is to be construed according to the same rules that govern the construction of other instruments. The intention of the parties is controlling if it can be fairly spelled out from the instrument. *Matteson v. Johnston* (1910), 139 App. Div. 859, 124 N. Y. Supp. 185.

Protection of grantee by covenants.—Covenants in a deed protect the grantee against every adverse right, interest or diminution as to the land, and he may rely

upon them for his security. *Huyck v. Andrews* (1899), 113 N. Y. 81, 90, 20 N. E. 581, 3 L. R. A. 789.

A covenant of seizin is not a covenant against incumbrances. Thus, the existence of a lease is not a breach of this covenant. *Hebler v. Brown* (1896), 18 Misc. 395, 397, 41 N. Y. Supp. 441. Nor is an outstanding mortgage. *Packer v. Rochester & Syracuse R. R. Co.* (1858), 17 N. Y. 283, 295; *Stanard v. Eldridge* (1819), 16 Johns. 254. But any easement except that of a public highway is a breach. *Huyck v. Andrews* (1889), 113 N. Y. 81, 85, 20 N. E. 581, 3 L. R. A. 789; *Whitbeck v. Cook* (1818), 15 Johns. 483, 490.

A covenant of seizin is a covenant *in presenti*, and a broken if good title in fee simple absolute and right of possession are not in the grantor at the time of the delivery of the conveyance. *Werner v. Wheeler* (1911), 142 App. Div. 358, 365, 127 N. Y. Supp. 158.

Covenants of seizin and the right to convey any or all the real estate executed by one who has no title are broken by the delivery of the deed and become choses in action; they do not run with the land and so do not pass to subsequent grantees without an assignment of the cause of action. *Wygatt v. Coe* (1891), 124 N. Y. 212, 218, 26 N. E. 611.

Covenant of seizin; breach; damages.—A covenant that grantors “are seized of the said premises in fee simple and have good right to convey the same” is not satisfied by possession, but must be construed to mean that the grantor at the time of the conveyance was lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple and had full power to convey the same. A covenant of seizin is broken, if at all, upon delivery of the deed, and in an action for breach of the covenant proof of eviction or ouster is not essential to the recovery of substantial damages. *Hilliker v. Rueger* (1914), 165 App. Div. 189, 151 N. Y. Supp. 234, *revd.* (1916), 219 N. Y. 334, 114 N. E. 391.

Breach of covenant of seizin; sufficiency of complaint.—A complaint which in substance alleges that K., on or about a certain date, executed and delivered to plaintiff a full covenant and warranty deed of certain described premises; that said deed contained a covenant that K. was seized in fee simple and had a good right to convey, and covenanted forever to warrant the title to said premises; that at the time of the delivery of the deed to plaintiff K. was not seized in fee simple and never had title or right to convey; that on the date of the conveyance and for some time prior thereto one McC. was and still is the owner of said premises; that the plaintiff, at the time of the execution and delivery of said deed, paid to K. a certain amount as consideration, and by reason thereof has sustained damages for said sum, with interest, sufficiently pleads a breach of the covenant of seizin, which covenant was broken when K., without title, delivered the deed. Negating the words of a covenant of seizin is a sufficient allegation of a breach thereof. *Veit v. McCauslan* (1913), 157 App. Div. 335, 142 N. Y. Supp. 281, *affd.* (1914), 213 N. Y. 678, 107 N. E. 1087.

The covenant for quiet enjoyment extends to the possession only, and not to the title, and is broken only by an entry and expulsion from, or some actual disturbance in the possession. *Whitbeck v. Cook* (1818), 15 Johns. 483, 490; *Scriver v. Smith* (1885), 100 N. Y. 471, 3 N. E. 675. There can be no breach of a covenant of warranty and peaceable enjoyment without any eviction or the establishment of facts showing a paramount title. *Kidder v. Bork* (1895), 12 Misc. 519, 33 N. Y. Supp. 663.

Covenants of warranty and of quiet enjoyment entered into jointly by the owner of the fee and a stranger to the title, who does not himself assume any title or right to convey, do not run with the land as against the stranger and

are not available in favor of a subsequent grantee who holds no assignment of the cause of action arising from a breach of the covenants. *Wygatt v. Coe* (1891), 124 N. Y. 212, 218, 26 N. E. 611.

An easement does not constitute a breach of covenant for quiet enjoyment or of warranty. *McMullin v. Wooley* (1868), 2 Lans. 394. Such a covenant is not broken by a bare trespass on land, not amounting to an eviction. *Horton v. Bauer* (1891), 129 N. Y. 148, 154, 29 N. E. 1.

A covenant against incumbrances is treated as a contract of indemnity, and although it is broken, if broken at all, as soon as made, the covenantee is entitled to nominal damages only until he actually suffers loss, but in that case he is entitled to complete indemnity for the amount of the loss. *King v. Union Trust Co.* (1911), 148 App. Div. 110, 133 N. Y. Supp. 18, *affd.* (1913), 208 N. Y. 566, 101 N. E. 1108.

An incumbrance within the terms of the covenant against incumbrances is said to be every right to or interest in the land tending to diminish the value or inconsistent with the passage of the fee by the conveyance. *Huyck v. Andrews* (1889), 113 N. Y. 81, 85, 20 N. E. 581, 3 L. R. A. 789.

A covenant entered into between owners of adjoining city lands regulating the erection of buildings on such lands constitutes an incumbrance upon a lot to which it applies. *Roberts v. Levy* (1867), 3 Abb. Pr. N. S. 311.

A tax or assessment is not an incumbrance within the meaning of a covenant against them until the amount thereof is ascertained or determined. *Harper v. Dowdney* (1889), 113 N. Y. 644, 21 N. E. 63; *Lathers v. Keogh* (1888), 109 N. Y. 583, 17 N. E. 131.

A covenant against incumbrances contained in a deed is broken if at all immediately upon the execution and delivery of the deed. *73rd St. Bldg. Co. v. Jencks* (1897), 19 App. Div. 314, 46 N. Y. Supp. 2; *Huyck v. Andrews* (1889), 113 N. Y. 81, 85, 20 N. E. 581, 3 L. R. A. 789.

An easement is a breach of covenant against incumbrance. *McMullin v. Wooley* (1868), 2 Lans. 394.

"Charge, incumbrance or lien"; assessment in street proceeding.—Under subdivision 3 of this section an assessment for benefit in a street opening proceeding in the city of New York becomes a "charge, incumbrance or lien," within the meaning of incumbrances, only after entry of the assessment in the office of collector of assessments and arrears under section 1017 of the Greater New York Charter. *Ryan v. Domestic Realty Co.* (1914), 85 Misc. 449, 147 N. Y. Supp. 974.

In an action on a breach of a covenant against incumbrances, the plaintiff's damages are not limited to the amount that may have been due on the lands when he purchased them, but what he has been obliged to pay to relieve them from the burden. The covenant is treated as one of indemnity, and although broken as soon as made, if broken at all, a recovery, beyond nominal damages, is confined to the actual loss sustained by the covenantee by reason of the breach. If he has extinguished an incumbrance, he is entitled to recover the cost of so doing. *Dinlany v. Brown* (1912), 148 App. Div. 671, 133 N. Y. Supp. 314.

Further assurance.—The expenses of complying with this covenant must be borne by the covenantee. *Werner v. Wheeler* (1911), 142 App. Div. 358, 369, 127 N. Y. Supp. 158.

A covenant of warranty is not a covenant against incumbrances. Thus, the existence of a lease, no act being attempted or threatened under it, does not constitute a breach of this covenant. *Herber v. Brown* (1896), 18 Misc. 395, 397, 41 N. Y. Supp. 441.

The fact that a portion of land conveyed with covenants of warranty was at the time of the conveyance a public highway and used as such does not constitute

a breach of warranty, but the rule does not apply where at the time of the conveyance there was no indication or notice, actual or constructive, of the existence of the highway. *Hymes v. Estey* (1889), 116 N. Y. 501, 22 N. E. 1087.

A general warranty not limited by other parts of the deed, however technically it operates, is only consistent with an intention of the grantor to convey the whole estate. *Thompson v. Simpson* (1891), 128 N. Y. 270, 286, 28 N. E. 627.

A covenant to give "a good and sufficient deed of conveyance" binds the vendor to convey a good title to the purchaser and if the title of the vendor be divested before he executed the deed, the vendee may rescind without demanding a conveyance. *Burwell v. Jackson* (1854), 9 N. Y. 535.

Covenants which run with the land.—Authorities collated and discussed. *Wygatt v. Coe* (1891), 124 N. Y. 212, 26 N. E. 611; S. C. (1895), 147 N. Y. 456, 42 N. E. 17. A covenant is said to run with the land when such covenant, given by a prior owner, inures to the benefit of the subsequent owners in the chain of title. Until breach, all covenants for title run with the land. Under the common-law doctrine of covenants, according to the weight of American authority, the covenant of seizin, the covenant of right to convey and probably the covenant against incumbrances, if broken at all, are deemed to be broken as soon as made, and, therefore, are regarded as covenants which do not run with the land; while the covenant of warranty and the covenant for quiet enjoyment refer to the future, and, hence, run with the land. *Clarke v. Priest* (1897), 21 App. Div. 174, 175, 47 N. Y. Supp. 489.

The covenants against incumbrance and for quiet enjoyment may be construed together and both be held to run with the land. *Andrews v. Appel* (1880), 22 Hun 429, 433.

A covenant relating to real estate runs with the land when either the liability to perform it, or the right to enforce it, passes to the assignee of the land. *Kidder v. Port Henry Iron Ore Co.* (1911), 201 N. Y. 445, 94 N. E. 1070.

A covenant to build fences is an affirmative one running with the land. *Concklin v. New York Cent. & H. R. R. Co.* (1912), 149 App. Div. 739, 134 N. Y. Supp. 191.

A covenant, whereby a grantee "for herself, her heirs and assigns," agreed forthwith to become a member of an association organized by her grantor, is personal and does not run with the land. *Rochelle Park Association v. Ensinger* (1910), 138 App. Div. 81, 122 N. Y. Supp. 556.

A covenant of warranty runs with the land and an eviction actual or constructive by an elder title constitutes a breach. A cause of action accrues upon a breach of such covenant to a remote grantee against the original covenantor. As such action for breach of warranty is based upon the privity of estate rather than upon privity of contract, the action is local and must be brought in the courts of the state where the land is situated. Hence, the courts of this state have no jurisdiction of an action against a domestic corporation for breach of such warranty brought by a remote grantee where the lands are situated in a foreign state. *Keyes & Marshall Bros. Realty Co. v. Trustees Canton College* (1911), 146 App. Div. 796, 131 N. Y. Supp. 527, *affd.* (1912), 205 N. Y. 593, 98 N. E. 1105; see *Hunt v. Hay* (1913), 156 App. Div. 138, 140 N. Y. 1070, *mod.* (1913), 214 N. Y. 578, 108 N. E. 851.

Measure of damages in action for breach of covenant, rule stated and discussed. See *Utica, Chenango & S. V. R. R. Co. v. Gates* (1896), 8 App. Div. 181, 40 N. Y. Supp. 316; *Dimmick v. Lockwood* (1833), 10 Wend. 142; *Andrews v. Appel* (1880), 22 Hun 429; *McGuckin v. Milbank* (1897), 152 N. Y. 297, 46 N. E. 490; *Jenks v. Quinn* (1891), 61 Hun 427, 16 N. Y. Supp. 240, *affd.* (1893), 137 N. Y. 223, 33 N. E. 376; *Seventy-third St. Bldg. Co. v. Jencks* (1897), 19 App. Div. 314, 46 N. Y. Supp. 2.

§ 254. Construction of clauses and covenants in mortgages and bonds.—

In mortgages of real property, and in bonds secured thereby or in assignments of mortgages and bonds, or in agreements to extend or to modify the terms of mortgages and bonds, the following or similar clauses and covenants must be construed as follows:

1. Clauses of mortgage. The words "This mortgage, made the ..(A).. day of ..(B).., nineteen hundred and ..(C).., between ..(D).., the mortgagor, and ..(E).., residing at ..(F).., the mortgagee, Witnesseth, that to secure the payment of an indebtedness in the sum of ..(G).. dollars, lawful money of the United States, to be paid on the ..(H).. day of ..(I).., nineteen hundred and ..(J).., with interest thereon to be computed from ..(K).. at the rate of ..(L).. per centum per annum, and to be paid ..(M).., according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee (description)," must be construed as equivalent in meaning to the words "This indenture, made the ..(A¹).. day of ..(B¹).., in the year nineteen hundred and ..(C¹).., between ..(D¹).., party of the first part, and ..(E¹).., of ..(F¹).., party of the second part.

"Whereas, the said ..(D¹).. is justly indebted to the said party of the second part in the sum of ..(G¹).. dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..(G¹).. dollars, on the ..(H¹).. day of ..(I¹).. nineteen hundred and ..(J¹).. and the interest thereon, to be computed from ..(K¹).., at the rate of ..(L¹).. per centum per annum, and to be paid ..(M¹)..

"It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any installment of principal, interest, taxes or assessments, as hereinafter provided.

"Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises, together with all fixtures and articles of personal property attached to, or used in connection with, the premises. To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. Provided, always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void."

(Explanation: Whatever words are inserted in the blank spaces above marked (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L) and (M) respectively, shall be construed as being inserted in the corresponding blank spaces above marked (A¹), (B¹), (C¹), (D¹), (E¹), (F¹), (G¹), (H¹), (I¹), (J¹), (K¹), (L¹) and (M¹) respectively.)

2. Covenant that whole sum shall become due. A covenant "that the whole of the said principal sum shall become due after default in the payment of any installment of principal or of interest for days, or after default in the payment of any tax, water rate or assessment for days after notice and demand," must be construed as meaning that should any default be made in the payment of any installment of principal or any part thereof, or in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax, water rate or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of days, or such tax, water rate or assessment remain unpaid and in arrear for days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

3. Covenant to pay indebtedness. In default of payment, mortgagee to have power to sell. A covenant "that the mortgagor will pay the indebtedness, as hereinbefore provided," must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the principal sum or the interest that may grow due thereon, or of any part thereof, or in case of any other default, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgager for that purpose duly authorized, constituted and appointed, to make and deliver

to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise; as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

4. Mortgagor to keep buildings insured. A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable, and that should the holder of the mortgage by reason of such insurance against loss by fire receive any sum or sums of money for damage by fire, such amount may be retained and applied by the holder of the mortgage toward payment of the sum secured by the mortgage, or the same may be paid over either wholly or in part to the mortgagor or to the heirs (or successors) or assigns of the mortgagor for the repair of said buildings or for the erection of new buildings in their place, or for any other purpose or object satisfactory to the holder of the mortgage, and if the mortgagee receive and retain insurance money for damage by fire to

said premises, the lien of the mortgage shall be affected only by a reduction of the amount of said lien by the amount of such insurance money received and retained by said mortgagee.

5. Mortgagor to warrant title. A covenant "that the mortgagor warrants the title to the premises," must be construed as meaning that the mortgagor warrants that he has good title to said premises and has a right to mortgage the same and that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

6. Mortgagor to pay all taxes, assessments or water rates. A covenant "that the mortgagor will pay all taxes, assessments or water rates and in default thereof, the mortgagee may pay the same" must be construed as meaning that until the amount hereby secured is paid, the mortgagor will pay all taxes, assessments and water rates which may be assessed or become liens on said premises, and in default thereof the holder of this mortgage may pay the same, and the mortgagor will repay the same with interest, and the same shall be liens on said premises and secured by the mortgage.

7. Statement of amount due. A covenant "that the mortgagor within days upon request in person or within days upon request by mail will furnish a statement of the amount due on this mortgage" must be construed as meaning that the mortgagor, and any subsequent owner of the premises described herein upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the mortgagee or to any proposed assignee of this mortgage, the amount of principal and interest then owing on this mortgage and whether any offsets or defenses exist against the mortgage debt; upon failure to furnish such certificate after the expiration of days in case the request is made personally, or after the expiration of days after the mailing of such request in case the request is made by mail, this mortgage shall become due at the option of the holder thereof.

8. Notice and demand. A covenant "that notice and demand or request may be made in writing and may be served in person or by mail" must be construed as meaning that every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally served on one or more of the persons who shall at the time hold the record title to the premises, or on their heirs or successors, or mailed by depositing it in any post-office station or letter-box, enclosed in a

post-paid envelope addressed to such person or persons, or their heirs or successors, at his, their or its address to the mortgagee last known.

9. Power of attorney to assignee. The word "assign" or other words of assignment, when contained in an assignment of a mortgage and bond, must be construed as having included in their meaning that the assignor does thereby make, constitute and appoint the assignee the true and lawful attorney, irrevocable, of the assignor, in the name of the assignor, or otherwise, but at the proper costs and charges of the assignee, to have, use and take all lawful ways and means for the recovery of the money and interest secured by the said mortgage and bond, and in case of payment to discharge the same as fully as the assignor might or could do if the assignment were not made. (*Section amended by L. 1917, ch. 682, in effect Sept. 1, 1917.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 219, as amended by L. 1897, ch. 277; originally revised from L. 1890, ch. 475, § 4.

Repeal.—Subd. 3, of this section, as it existed prior to the amendment by L. 1917, ch. 682, was in effect repealed by subd. 2, of § 271. *Heal v. Richmond County Savings Bank* (1908), 127 App. Div. 428, 431, 111 N. Y. Supp. 602, *affd.* (1909), 196 N. Y. 549, 89 N. E. 1101.

Construction of this section with section 271, *post*.—This section was not superseded by section 271, *post*, which was passed two years after it. This section is expressly limited in effect to mortgages on leases on real property and bonds secured thereby as distinguished from mortgages on the freehold. The two sections may be read together, and while section 271, subdivision 2, relating to mortgages on leases, contains no express provision that for a failure to pay a premium of insurance or assign to the mortgagee a satisfactory policy, he shall have the right to elect to demand payment of the entire principal sum, this section does confer upon him such right if he brings himself within its provisions. *Bieber v. Goldberg* (1909), 133 App. Div. 207, 117 N. Y. Supp. 211.

Covenant to insure.—A mortgage, which contains a covenant to insure, and provides, that upon default by the mortgagor, the mortgagee may insure, and the premiums paid shall be added to the mortgage debt, does not confer upon the mortgagee the right to elect that the whole mortgage debt shall be due and payable immediately, where the mortgagee has not procured insurance to be made upon the failure of the mortgagor to conform to his agreement. *Bumpus v. Willett* (1907), 55 Misc. 94, 106 N. Y. Supp. 366.

Where a mortgagor of real estate, after repeated demands, fails to have the buildings thereon insured and permits them to become vacant, making it impossible for the mortgagee to effect such insurance, he is, under the usual insurance clause of the mortgage giving him the option to declare the whole sum secured by the mortgage due and payable, authorized by this section to bring an action to foreclose because of the mortgagor's breach of his covenant to insure. *Marlatt v. Holdridge* (1916), 97 Misc. 456, 161 N. Y. Supp. 148.

Failure of insurance agent to collect premiums from mortgagor; when mortgagee not liable for default of mortgagor.—Under the standard mortgagee clause, attached to policies of fire insurance, providing in substance that the mortgagor shall keep the buildings insured against loss by fire for the benefit of the mortgagees, and that in case the mortgagor shall neglect to pay a premium due on the policy the mortgagee shall, on demand, pay the same, an insurance agent who has paid to the insurer premiums on policies issued to a mortgagor, and has failed to collect the same from the mortgagor, cannot recover the amount thereof from the mortgagee,

where the insurance policies were never cancelled and he did not call upon the mortgagee to pay the premiums until several years after they became due. The provision that in case the mortgagor should fail to pay the premiums the mortgagee will pay the same on demand is not a covenant on his part, but is merely a condition which, if not complied with by the mortgagee, precludes him from recovering from the insurer under the mortgagee clause. *Coykendall v. Blackmar* (1914), 161 App. Div. 11, 146 N. Y. Supp. 631.

§ 255. Construction of grant of appurtenances and of all the rights and estate of grantor.—In any grant or mortgage of freehold interests in real estate, the words, “together with the appurtenances and all the estate and rights of the grantor in and to said premises,” must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 220; originally revised from L. 1890, ch. 475, § 2.

§ 256. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.—In any deed by an executor of, or trustee under a will, the words “together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise,” must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 221; originally revised from L. 1890, ch. 475, § 3.

§ 257. Covenants bind representatives of grantor and mortgagor and inure to the benefit of whom.—All covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and inure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or

mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

Source.—Former Real Prop. L. (L. 1896, ch. 457) § 222; originally revised from L. 1890, ch. 475, § 5.

§ 258. **Short forms of deeds and mortgages.**—The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

SCHEDULE A.

DEED WITH FULL COVENANTS.

Statutory Form A.

(Individual)

This indenture, made the day of nineteen hundred and, between (insert residence) party of the first part, and (insert residence) party of the second part,

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, and assigns forever. And said covenants as follows:

First. That said is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said will forever warrant the title to said premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.

DEED WITH FULL COVENANTS.

Statutory Form AA.

(Corporation)

This indenture, made the day of, nineteen hundred

and, between, a corporation organized under the laws of, party of the first part, and (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, and assigns forever. And the party of the first part covenants as follows:

First. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE C.

BARGAIN AND SALE DEED.

Statutory Form B.

Without Covenant against Grantor.
(Individual)

This indenture, made the day of, nineteen hundred and, between, (insert residence) party of the first part, and, (insert residence) party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the above granted premises unto the party of the second part, and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE D.

BARGAIN AND SALE DEED.

Statutory Form BB.

Without Covenant against Grantor.
(Corporation)

This indenture, made the day of, nineteen hundred and, between, a corporation organized under the laws of, party of the first part, and (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, and assigns forever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE E.

BARGAIN AND SALE DEED.

Statutory Form C.

With Covenant against Grantor.
(Individual)

This indenture, made the day of, nineteen hundred and, between, (insert residence), party of the first part, and, (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, his heirs and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever. And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE F.

BARGAIN AND SALE DEED.

Statutory Form CC.

With Covenant against Grantor.
(Corporation)

This indenture, made the day of, nineteen hundred and, between, a corporation organized under the laws of, party of the first part, and (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, and assigns forever. And the party of the first part covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE G.

QUITCLAIM DEED.

Statutory Form D.

(Individual)

This indenture, made the day of, nineteen hundred and, between, (insert residence), party of the first part, and (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release, and quitclaim unto the party of the second part, and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE H.

QUITCLAIM DEED.

Statutory Form DD.

(Corporation)

This indenture, made day of, nineteen hundred and, between, a corporation organized under the laws of, party of the first part, and (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, his heirs and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE I.

EXECUTOR'S DEED.

Statutory Form E.

This indenture, made the day of, nineteen hundred and, between as executor of the last will and testament of, late of, deceased, party of the first part, and (insert residence) party of the second part:

Witnesseth, that the party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, his heirs and assigns forever, all (description), together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the premises herein granted unto the party of the second part, and assigns forever.

And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE J.

REFEREE'S DEED IN FORECLOSURE.

Statutory Form F.

This deed, made the day of, nineteen hundred and, between, referee duly appointed in the action hereinafter mentioned, grantor, and..... (insert residence), grantee:

Witnesseth, that the grantor, the referee appointed in an action between, plaintiffs, and, defendants, foreclosing a mortgage, recorded on the day of, in the office of the of the county of, in liber of mortgages, at page, in pursuance of a judgment entered at a special term of the, on the day of, and in consideration of dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee, all (description),

To have and to hold the premises herein granted unto the grantee, and assigns forever.

In witness whereof, the grantor has hereunto set his hand and seal.
In presence of:

SCHEDULE K.

REFEREE'S DEED IN PARTITION.

Statutory Form G.

This deed, made the day of, nineteen hundred and, between, referee duly appointed in the action hereinafter mentioned, grantor, and (insert residence), grantee:

Witnesseth, that the grantor, the referee appointed in an action in partition between, plaintiffs, and, defendants, in pursuance of a judgment entered at a special term of the, on the day of, and in consideration of dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee all (description),

To have and to hold the premises herein granted unto the grantee, and assigns forever.

In witness whereof, the grantor has hereunto set his hand and seal.
In presence of:

SCHEDULE L.

ASSIGNMENT OF LEASE.

Statutory Form H.

Know that, assignor, in consideration of dollars, paid by, assignee, hereby assigns unto the assignee, a certain lease made by, to, dated the day of, and recorded on the day of, in the office of the of the county of, in liber of conveyances, at page, covering premises, together with the premises therein described, and the buildings thereon, with the appurtenances,

To have and to hold the same unto the assignee, and assigns, from the day of, nineteen hundred and, for all the rest of years mentioned in the said lease, subject to the rents, covenants, conditions and provisos therein also mentioned.

And the assignor hereby covenants that the said assigned premises are free from incumbrances.

In witness whereof, the assignor has hereunto set his hand and seal this day of, nineteen hundred and

In presence of:

SCHEDULE M.

MORTGAGE.

Statutory Form M.

This mortgage, made the day of, nineteen hundred and, between, (insert residence) the mortgagor, and (insert residence), and mortgagee.

Witnesseth, that to secure the payment of an indebtedness in the sum of dollars, lawful money of the United States, to be paid on the day of, nineteen hundred and, with interest thereon to be computed from, at the rate of per centum per annum, and to be paid, according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee (description).

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.
2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.
3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.
4. That the whole of said principal sum shall become due after default

in the payment of any installment of principal or of interest for days, or after default in the payment of any tax, water rate or assessment for days after notice and demand.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within days upon request in person or within days upon request by mail will furnish a statement of the amount due on this mortgage.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

In witness whereof this mortgage has been duly executed by the mortgagor.

In presence of:

SCHEDULE N.

ASSIGNMENT OF MORTGAGE.

Statutory Form I.

Without Covenant.

Know that, assignor, in consideration of dollars, paid by, assignee, hereby assigns unto the assignee, a certain mortgage made by, given to secure payment of the sum of dollars and interest, dated the day of, recorded on the day of, in the office of the of the county of, in liber of mortgages, at page, covering premises, together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

To have and to hold the same unto the assignee, and to the successors, legal representatives and assigns of the assignee forever.

In witness whereof, the assignor has hereunto set his hand and seal this day of, nineteen hundred and

In presence of:

SCHEDULE O.

ASSIGNMENT OF MORTGAGE.

Statutory Form J.

With Covenant.

Know that, assignor, in consideration of dollars, paid by, assignee, hereby assigns unto the assignee, a certain mortgage made by, given to secure payment of the sum of dollars and interest, dated the day of, recorded on the day of, in the office of the

of the county of, in liber of mortgages, at page, covering premises, together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

To have and to hold the same unto the assignee, and to the successors, legal representatives and assigns of the assignee forever.

And the assignee covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of dollars, with interest thereon at per centum per annum from the day of, nineteen hundred and

In witness whereof, the assignor has hereunto set his hand and seal this day of, nineteen hundred and

In presence of:

SCHEDULE P.

RELEASE OF PART OF MORTGAGED PREMISES.

Statutory Form K.

This indenture, made the day of, nineteen hundred and, between, party of the first part, and, party of the second part,

Whereas, by indenture of mortgage, bearing date the day of, nineteen hundred and, recorded in the office of the of the county of, in liber of mortgages, of section, page, on the day of, nineteen hundred and, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements of which the lands hereinafter described are part, unto,

And whereas, the party of the first part, at the request of the party of the second part, has agreed to give up and surrender the lands hereinafter described unto the party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage,

Now this indenture witnesseth, that the party of the first part, in pursuance of said agreement, and in consideration of dollars, lawful money of the United States, paid by the party of the second part, does grant, release and quitclaim unto the party of the second part, all that part of said mortgaged lands described as follows:..... (description),

Together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from said mortgage, and that the rest of the land in said mortgage specified may remain to the party of the first part as heretofore,

To have and to hold the lands and psemises hereby released and conveyed to the party of the second part, and assigns, to and their own proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

In witness whereof, the party of the first part has signed and sealed these presents the day and year first above written.

In presence of:

SCHEDULE Q.

SATISFACTION OF MORTGAGE.

Statutory Form L.

Know all men by these presents, that do hereby certify that a certain indenture of mortgage, bearing date the day of, nineteen hundred and, made and executed by, to secure payment of the principal sum of dollars and interest, and duly recorded in the office of the of the county of, in liber of mortgages, of section, page, on the day of, nineteen hundred and, is paid, and do hereby consent that the same be discharged of record.

Dated the day of, nineteen hundred and.....

In presence of:

(Section amended by L. 1917, ch. 681, in effect September 1, 1917.)

Source.—Former Real Prop. L. (L. 1897, ch. 547) § 223, as amended by L. 1897, ch. 277, § 2; originally revised from L. 1890, ch. 475, § 6.

§ 259. When contract to lease or sell void.—A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the lessor or grantor, or by his lawfully authorized agent.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 224; originally revised from R. S., pt. 2, ch. 7, tit. 1, §§ 8, 9.

References.—When written conveyance necessary, Real Property Law, § 242. Personal property, Personal Property Law, §§ 31, 85.

The purpose of this statute was to teach parties the wisdom of obedience to its provisions and to avoid fraud and perjuries in relation to parol contracts. The frailty of human memory and the promptings of self-interest were found to be dangerous temptations to the commission of frauds and other crimes and this statute was intended to protect against them. Courts have pronounced it wise and they could not, if they would, disregard its teachings. *Loomis v. Loomis* (1871), 60 Barb. 22, 25.

The purpose of this section is to prevent fraud in the claiming of an oral contract giving the right to possession of real property where none exists. *Roskam-Scott Co. v. Thomas* (1916), 175 App. Div. 84, 161 N. Y. Supp. 776.

Contract to convey land; what constitutes.—*Worthington Brick Co. v. Bull* (1887), 44 Hun 462.

The statute enacts a rule of evidence and is satisfied if the contract is manifested or proved by a writing, however it originated, whether by oral agreement or otherwise. *Bayles v. Strong* (1905), 104 App. Div. 153, 93 N. Y. Supp. 346, *affd.* (1906), 185 N. Y. 582, 78 N. E. 1099.

Application.—The statute of frauds has no application to an executed agreement. *Remington v. Palmer* (1875), 62 N. Y. 31, 34. A permit to pay for land conveyed is not within the statute and need not be in writing. *Thomas v. Dickinson* (1855), 12 N. Y. 364, 372.

The statute is not applicable to contracts made in this state for the sale of lands situated in other states. *Burrell v. Root* (1869), 40 N. Y. 496. Or to a contract in regard to the loss or profits on the future sale of real estate. *Babcock v. Read* (1884), 50 Super. Ct. 126, 18 J. & S. 126, *affd.* (1885), 99 N. Y. 609, 1 N. E. 141. Or to a parol agreement to pay a large sum for a deed of land which purports to convey the land for one dollar. *Tuthill v. Roberts* (1880), 22 Hun 304.

A parol agreement to convey premises is void under the statute of frauds. *Loomis v. Loomis* (1871), 60 Barb. 22. A parol contract to convey land in consideration of a specified sum payable in work is void under the statute. *King v. Brown* (1842), 2 Hill 486.

A parol contract for personal service to be performed in the future and to be paid for in real and personal estate at the death of the employer, is void within the statute of frauds. *Lisk v. Sherman* (1857), 25 Barb. 433.

Verbal agreement under which one party agrees to purchase land at a foreclosure sale and thereafter convey the same to another party at a price named is within the statute and void. *Bauman v. Holzhausen* (1882), 26 Hun 505.

Growing trees, fruit and grass being part of the land are within the statute of frauds and cannot be sold or conveyed by parol. *Green v. Armstrong* (1845), 1 Den. 550; *Bank of Lansingburgh v. Crary* (1847), 1 Barb. 542, 545. Contract for sale of logs, when it need not be in writing, see *Boyce v. Washburn* (1875), 4 Hun 792.

Where parties orally agreed that defendant should lease a certain store for a term of two years in his own name, and assume personally the status and liability of a tenant as between himself and the landlord, that plaintiff and defendant should each occupy one-half of the premises and that plaintiff should pay to defendant one-half of the rent, the agreement was within the Statute of Frauds and void. *Mayer v. Seril* (1917), 98 Misc. 270, 162 N. Y. Supp. 903.

Parol agreement to convey lands.—A parol agreement made by one who purchases lands at a foreclosure sale to hold them and convey to another person, at an advance over the purchase price, within a specified period, is void under the Statute of Frauds. *Riker v. Comfort* (1910), 140 App. Div. 117, 124 N. Y. Supp. 1106.

Validity of parol contract for sale of two parcels of land for a gross price, see *Smith v. Underdunk* (1884), 1 Sandf. ch. 579.

Oral contract to buy lands for another is void. *Wheeler v. Hall* (1900), 54 App. Div. 49, 66 N. Y. Supp. 257.

The exclusive right to operate for oil cannot be created, except in accordance with this section. *De Hart v. Enright* (1916), 93 Misc. 213, 157 N. Y. Supp. 46.

An agreement for the purchase of the privilege of burial in a cemetery is for an easement in land and must be in writing. *Matter of O'Rourke* (1895), 12 Misc. 248, 34 N. Y. Supp. 45.

A parol agreement to will property in consideration of a conveyance to testator is void. *Krell v. Stein* (1911), 127 N. Y. Supp. 150.

An agreement for the purchase of certain real estate as an investment must be in writing. *Slevin v. Wallace* (1892), 64 Hun 288, 19 N. Y. Supp. 87, *affd.* (1894), 144 N. Y. 635, 39 N. E. 494.

Sale of buildings.—An agreement by the owner of real estate for the sale of buildings standing thereon and their removal by the vendee is void unless in writing. *Volk v. Olsen* (1907), 54 Misc. 227, 104 N. Y. Supp. 415.

An agreement for sale of growing trees with the right to enter on the land at a future time and remove them is a contract for the sale of an interest in lands, and to be valid must be in writing. *Green v. Armstrong* (1845), 1 Denio 550, 553.

An oral acceptance, of a written offer to purchase property signed by the agent of the proposed purchaser, will not satisfy the requirements of the Statute of Frauds. *Montauk Association v. Daly* (1901), 62 App. Div. 101, 70 N. Y. Supp. 861, *affd.* (1902), 171 N. Y. 659, 63 N. E. 1119.

An oral agreement to release defendant from his agreement to purchase lands and convey to the plaintiffs and to allow him to become the sole owner concerns an interest in real property, and is unenforceable. *McCammon v. Kaiser* (1913), 157 App. Div. 519, 142 N. Y. Supp. 721, *mod.* (1916), 218 N. Y. 46, 112 N. E. 572.

A parol agreement to substitute a valid for a worthless mortgage, as consideration for a conveyance, the conveyance having been executed, will be enforced. *Roberge v. Waine* (1893), 71 Hun 172, 24 N. Y. Supp. 562, *affd.* (1895), 144 N. Y. 709, 39 N. E. 631.

A parol agreement to give a lease for more than one year is void. *Garofalo v. Rohleder* (1907), 52 Misc. 553, 102 N. Y. Supp. 897.

A parol agreement for a lease for one year, with the privilege of two more, relates to the leasing of lands for more than one year, and is void. *Rosen v. Rose* (1895), 13 Misc. 565, 34 N. Y. Supp. 467.

A tenancy for one year, the original lease for a longer period being void under the statute, can only arise from a new contract. *Wilder v. Stace* (1891), 61 Hun 233, 15 N. Y. Supp. 870.

Where a party refrains from bidding at a judicial sale, relying upon an agreement by another that, if he will do so, the latter would give him a lease for a term of years, such agreement is taken out of the statute by the part performance. *Noble v. McGurk* (1896), 16 Misc. 461, 39 N. Y. Supp. 921.

An agreement, intended to effect a new lease for an unexpired term of more than one year, cannot be created by parol. *Seymour v. Hughes* (1907), 55 Misc. 248, 105 N. Y. Supp. 249. See also cases cited under § 242, *ante*.

A partnership agreement to engage in real estate transactions need not be in writing. *Larkin v. Martin* (1905), 46 Misc. 179, 93 N. Y. Supp. 198. See also cases cited under section 242, *ante*.

Judicial sales are not within the statute of frauds and are binding upon the purchaser without any written contract or memorandum of the terms of sale. *Andrews v. O'Mahoney* (1889), 112 N. Y. 567, 572, 20 N. E. 374.

Rescission of contract by parol agreement.—A contract for the sale of land may be rescinded by a subsequent parol agreement. *Proctor v. Thompson* (1883), 13 Abb. N. C. 340; see also *Marie v. Garrison* (1883), 13 Abb. N. C. 210, 214.

Delivery of contract to former agent of proposed vendee.—The delivery of a contract for the sale of land, duly executed by the vendor to a person who had previously acted as agent of the proposed vendee, but was not authorized to accept such delivery, and who had been instructed by his principal to inform the vendor that the proposed vendee had determined not to take the property, and whose authority to represent the proposed vendee has terminated prior to the attempted delivery, does not create a valid contract. *Montauk Association v. Daly* (1901), 62 App. Div. 101, 70 N. Y. Supp. 861, *affd.* (1902), 171 N. Y. 659, 63 N. E. 1119.

Entire contract must be in writing.—*Wright v. Weeks* (1862), 25 N. Y. 153, 157. If part of an entire contract is void under the Statute of Frauds, the whole is void. *De Beerski v. Paige* (1867), 36 N. Y. 537, 539; *Thayer v. Rock* (1834), 13 Wend. 53.

"Memorandum."—"As a general rule the statute is satisfied when the memorandum shows with reasonable clearness that the defendant's promise is designed to procure something to be done, foreborne, or permitted by the party to whom it is made, either to or for the promisor or a third party. * * * Where the language of the instrument is such as to warrant the inference that the consideration rests upon mutual promises, the writing satisfies all the requirements of the statute." *Seymour v. Warren* (1904), 179 N. Y. 1, 71 N. E. 260.

All the material parts of the contract must be covered, but there may be more than one writing. *Wright v. Weeks* (1862), 25 N. Y. 153; *Odell v. Montross* (1877), 68 N. Y. 499; *Raubitschek v. Blank* (1880), 80 N. Y. 478; *Newton v. Bronson* (1855), 13 N. Y. 587; *Tallman v. Franklin* (1856), 14 N. Y. 584; *Mentz v. Newwitter* (1890), 122 N. Y. 491, 25 N. E. 1044, 11 L. R. A. 97; *Coe v. Tough* (1889), 116 N. Y. 273, 22 N. E. 550; *Ruggerio v. Leuchtenberg* (1908), 61 Misc. 298, 113 N. Y. Supp. 615; *Boehly v. Mansing* (1907), 52 Misc. 382, 102 N. Y. Supp. 171. Assent by the vendee is essential. *Reynolds v. Dunkirk & State Line R. R. Co.* (1854), 17 Barb. 613, 616. The provisions of the statute may be satisfied by several writings, if they can be understood without oral proof. The force of the writings is not affected by the expectation of both parties that there would be a formal written contract. *Levin v. Dietz* (1905), 106 App. Div. 208, 94 N. Y. Supp. 419.

Letter by firm of real estate brokers to owner of premises, with the terms to be implied therefrom, held to constitute a sufficient "memorandum," within the statute. *Seymour v. Warren* (1904), 179 N. Y. 1, 71 N. E. 260.

The requirement of the statute that "the contract, or some note or memorandum thereof, expressing the consideration," be in writing and subscribed by the grantor, is met by a writing on the back of a card, signed by the owner of the land, describing the land and stating what he will take for it. *Levin v. Dietz* (1905), 48 Misc. 593, 96 N. Y. Supp. 468, *affd.* (1907), 119 App. Div. 875, 104 N. Y. Supp. 1131, *revd.* (1909), 194 N. Y. 376, 87 N. E. 454.

A written receipt or statement, signed by the owner of real property, that the person named therein has paid a certain sum "on his contract with me in regard to his buying of me and my selling to him" certain real property, does not satisfy the Statute of Frauds or constitute a valid contract. *Burrows v. Fischer* (1911), 71 Misc. 168, 129 N. Y. Supp. 902.

Description of land.—A contract for the sale of land which described the subject matter as "the property known as the Star and Crescent Furnace, in Cherokee County, near Rush, Texas," identifies the property with sufficient definiteness to answer the requirements of the statute. *Daniels v. Rogers* (1905), 108 App. Div. 338, 96 N. Y. Supp. 642.

The words of an agreement to sell, "and the land of the said lessor adjoining on the east," viz., adjoining the lot leased on the east, are a sufficient description of the land within the statute. *Heyward v. Wilmarth* (1902), 78 N. Y. Supp. 347.

Where one S. sells to B., by an oral contract, locust timber standing on premises known as Oakwood in Suffolk county, and delivers to B. the following receipt, dated and signed: "Received from Thomas N. Bayles two hundred and twenty-five dollars for locust at Oakwood," such receipt is sufficient to satisfy the statute. *Bayles v. Strong* (1905), 104 App. Div. 153, 93 N. Y. Supp. 346, *affd.* (1906), 185 N. Y. 582, 78 N. E. 1099.

Memorandum by auctioneer and vendor.—Where an auctioneer and a vendor of real property, just before the sale thereof at auction, sign the terms of sale with a poster attached thereto containing separate diagrams of the parcels to be sold, and the auctioneer reads them to the assembled buyers, and at the time of knocking down one of the parcels makes on such parcel, as laid out on the diagram then before him on the stand, a pencil memorandum of the amount bid and of the name

of the purchaser, there is a sufficient compliance with the Statute of Frauds, and the fact that the terms of the sale were signed by the vendor before the sale does not impair its validity. *Hagedorn v. Lang* (1898), 34 App. Div. 117, 54 N. Y. Supp. 602.

Memorandum by proposed tenant to execute lease.—A written memorandum signed by a proposed tenant agreeing to execute a lease of certain premises when presented to him, sent to the proposed landlord and indorsed "accepted" by him, is binding upon the tenant, although no copy of the paper was returned to the tenant, after acceptance by the landlord and he was not notified of the acceptance. *Corn v. Bergmann* (1910), 138 App. Div. 260, 123 N. Y. Supp. 160.

A receipt merely acknowledging payment of a month's rent under a lease to be given for more than a year, which does not describe or refer to the premises or specify the terms and covenants of the lease to be given, does not constitute a memorandum which will take the contract out of the Statute of Frauds. *Nasano-witz v. Hanf* (1896), 17 Misc. 157, 39 N. Y. Supp. 327.

Parol evidence is not admissible to vary the terms of a memorandum agreement relating to the sale of real estate, but it may be received to show the circumstances relating to the situation of the parties in respect to the land, so as to enable the court definitely to ascertain the property to which the contract referred. *Miller v. Tuck*, 95 App. Div. 134, 88 N. Y. Supp. 495 (1904).

Binding contract for renewal of lease.—A letter by the owner of property to her agent with whom she had directed a tenant to negotiate, stating that she was willing to renew the lease, is equivalent to an offer directly made to the tenant, and when accepted by it becomes a binding contract within the meaning of this section. *Roskam-Scott Co. v. Thomas* (1916), 175 App. Div. 84, 161 N. Y. Supp. 776.

The words "subscribed," as determined by adjudication, means signing at the end or bottom of the contract. *Worthington Brick Co. v. Bull* (1887), 44 Hun 462, 468, 9 N. Y. St. Rep. 195; *Vielle v. Osgood* (1849), 8 Barb. 130, 132; *Haydock v. Stow* (1869), 40 N. Y. 363, 370. The contract or memorandum must be signed by lessor, vendor, or duly authorized agent. Vendee need not sign. *Kittel v. Stueve* (1895), 10 Misc. 696, 31 N. Y. Supp. 821, *affd.* (1895), 146 N. Y. 380, 41 N. E. 89; *Webster v. Zielly* (1868), 52 Barb. 482; *Edwards v. The Farmers' Fire Ins. Co.* (1839), 21 Wend. 467, *affd.* (1841), 26 Wend. 541; *Briggs v. Partridge* (1876), 64 N. Y. 357; *Worrall v. Munn* (1851), 5 N. Y. 229; *Dykers v. Townsend* (1861), 24 N. Y. 57; *Newton v. Bronson* (1856), 13 N. Y. 587; *Griffin v. Baust* (1898), 26 App. Div. 553, 50 N. Y. Supp. 905; *Reilly v. Steinhardt* (1908), 58 Misc. 471, 111 N. Y. Supp. 472, *affd.* (1908), 126 App. Div. 909, 110 N. Y. Supp. 1142; *Earl v. Campbell* (1857), 14 How. Pr. 330, 333; *Nat. Fire Ins. Co. v. Loomis* (1845), 11 Paige 431, 433. All the vendors must sign when more than one are included in the contract of sale. *Snyder v. Neefus* (1868), 53 Barb. 63, 66.

The memorandum to be subscribed by the party by whom a sale is to be made is not the final instrument, but only a paper containing the terms of the transferring instrument thereafter to be made. *Hagedorn v. Lang* (1898), 24 App. Div. 117, 54 N. Y. Supp. 602.

Signing with rubber stamp.—An actual signing of the name by the hand at the end of an agreement may be effected by the use of a rubber stamp or a typewriter. *Landecker v. Co-operative Building Bank* (1911), 71 Misc. 517, 130 N. Y. Supp. 780.

Signature of contract for sale of land.—Agreements for the sale of land must be signed by the vendor or his lawful agent, see *Champlin v. Parish* (1845), 11 Paige 405. But the purchaser of land is not required by the statute to sign the contract. *Bleeker v. Franklin* (1853), 2 Ed. Smith 93; *M'Crea v. Purmort* (1836), 16 Wend. 461.

An agent within the meaning of the Statute of Frauds who can sign the name of the owner of lands to a contract for the sale thereof, is not one who has a mere authority to make a *bargain* for the sale, but one who is made the owner's agent to *sign* his name to the contract. That agency may be by parol, but it is not included in a mere authority to sell. *Coleman v. Garrigues* (1854), 18 Barb. 60, 68. An agent acting under parol authority may bind his principal by a contract for the sale of lands executed by him in the name of his principal. *Moody v. Smith* (1877), 70 N. Y. 598; *Champlin v. Parish* (1845), 11 Paige 405; *Worrall v. Munn* (1851), 5 N. Y. 229, 243. Attorney as authorized agent, see *Townsend v. Hubbard* (1842), 4 Hill 351, 357.

Authority of agent to execute lease for more than year sufficiently shown by letter and minutes of directors' meeting of owner. *Davis Bldg. Co. v. Schoenfeld* (1916), 158 N. Y. Supp. 727.

The ratification of a lease for a term of years, executed by an agent of the owner without authority, must be in writing. *Long v. Poth* (1896), 16 Misc. 85, 37 N. Y. Supp. 670.

A lease for a term of years executed by an agent of the owner who has only oral authority to let the premises by the year is not binding upon his principal, unless there has been an acceptance or ratification of his acts. *Long v. Poth* (1896), 16 Misc. 85, 37 N. Y. Supp. 670.

An option for the purchase of real estate, made by an agent having only parol authority, is binding upon his principal. *Hall v. Hyle* (1912), 76 Misc. 71, 136 N. Y. Supp. 887, *affd.* (1913), 157 App. Div. 903, 142 N. Y. Supp. 1121.

Modification of contract by parol.—A contract or covenant under seal cannot be modified before breach by a parol executory contract. *Coe v. Hobby* (1878), 72 N. Y. 141; *Thomson v. Poor* (1890), 57 Hun 285, 288, 10 N. Y. Supp. 597.

Effect of void contract.—A contract that under the statute cannot be enforced directly or indirectly confers no right and creates no obligation as between the parties. *Dung v. Parker* (1873), 52 N. Y. 494. But it is not illegal. Parties are at liberty to act under such contracts if they think proper. *Abbott v. Draper* (1847), 4 Den. 51, 53.

A parol lease for more than a year however void as to the term and the interest in lands sought to be created, regulates the relations of the parties to it in other respects and may be resorted to to determine the amount of rent to be paid, the time of year when the tenant may be compelled to leave, etc. *Reeder v. Sayre* (1877), 70 N. Y. 180, 184; *Talamo v. Spitzmiller* (1890), 120 N. Y. 37, 42, 23 N. E. 980, 8 L. R. A. 221. If a tenant enters and occupies premises under such a lease, he may be compelled to pay for the use and occupation. *Van Arsdale v. Buck* (1903), 82 App. Div. 383, 81 N. Y. Supp. 1017.

The value of a void lease, given for services, cannot be shown for the purpose of proving the value of plaintiff's services. *Erben v. Lorillard* (1859), 19 N. Y. 299, *revg.* (1856), 23 Barb. 82.

Part performance.—*Wood v. Mulock* (1882), 48 Super. Ct. 70, 16 J. & S. 70; *Murphy v. Whitney* (1893), 69 Hun 573, 23 N. Y. Supp. 1134. The mere payment of money will not take a verbal contract for the sale of lands out of the operation of the statute. *Malins v. Brown* (1850), 4 N. Y. 403. A part performance by the payment of money is not sufficient to take the contract out of the statute, as the money may be returned, and the parties thus placed in their former position. *Nasanowitz v. Hanf* (1896), 17 Misc. 157, 39 N. Y. Supp. 327.

The acts of part performance which will take a case out of the Statute of Frauds must be unequivocally referable to the agreement of which they are a part execution. *Todd v. Pratt* (1912), 149 App. Div. 459, 133 N. Y. Supp. 949, *affd.* (1914), 210 N. Y. 575, 104 N. E. 1142.

Part payment on a parol contract for the sale of lands does not take the contract out of the statute so as to enable the vendor to sue for the balance. *Cagger v. Lansing* (1871), 43 N. Y. 550; *Abbott v. Draper* (1847), 4 Den. 51, 53; *Baldwin v. Palmer* (1851), 10 N. Y. 232, 234. There must be some other action. The taking possession and making improvements after payment of the purchase money has been held a necessary condition. *Dunckel v. Dunckel* (1890), 56 Hun 25, 8 N. Y. Supp. 888. Partial performance of an oral contract for a five years' lease may be sufficient to take the agreement out of the Statute of Frauds and to authorize a decree of specific performance of the agreement. *Schirmer v. Rehill* (1908), 57 Misc. 439, 109 N. Y. Supp. 745. But the doctrine of part performance will not apply so as to take a trust of real estate out of the Statute of Frauds. *Rathbun v. Rathbun* (1849), 6 Barb. 98, 106.

The payment of the consideration for an oral contract to convey lands, standing alone, does not take the contract out of the statute; in addition to such payment the partial performance must be such that the party cannot be put in the same position as before, and the equitable rule contemplates some action on the part of the party himself from which he cannot recede without injury to himself and which cannot be compensated in damages. *Miltholland v. Payne* (1915), 169 App. Div. 712, 155 N. Y. Supp. 773, *affd.* (1916), 218 N. Y. 675, 113 N. E. 1861.

Part performance sufficient to take agreement out of statute. *Murphy v. Whitney* (1894), 140 N. Y. 541, 35 N. E. 930, 24 L. R. A. 123.

Where a father and daughter made an oral agreement by which the father agreed to advance to the daughter the necessary moneys to enable her to purchase a piece of land and erect a hotel thereon, the daughter to pay five per cent. interest upon the advances and the title to be taken and remain in the father's name pending repayment of the advances, evidence that land was purchased in the father's name and a hotel erected thereon and that the daughter acquired and retained exclusive possession of the premises, paid the taxes and insurance premiums and expended in making improvements of a substantial and permanent character moneys amounting to \$900, is sufficient to take the contract out of the Statute of Frauds. *Luessen v. Morich* (1902), 72 App. Div. 443, 76 N. Y. Supp. 663.

The discontinuance of prior actions and the cancelling of *les pendens* are not such part performance of an agreement of the parties to deliver checks one to the other, now placed in escrow, and to be delivered upon the signing of an agreement, as to entitle one party to compel the other to execute and deliver the deed. *Reisterer v. Reisterer* (1913), 82 Misc. 157, 143 N. Y. Supp. 307.

Marriage is not a sufficient part performance of an ante-nuptial agreement to convey. *Hunt v. Hunt* (1900), 55 App. Div. 430, 66 N. Y. Supp. 957, *affd.* (1902), 171 N. Y. 396, 64 N. E. 159; *Adams v. Swift* (1915), 155 N. Y. Supp. 873, 169 App. Div. 802.

When defense of statute of frauds available.—*Gross v. Gorsch* (1908), 124 App. Div. 834, 109 N. Y. Supp. 234.

A party to a contract for the sale of lands, who induces the other party thereto to grant an oral extension of the time for the performance of such contract, is estopped from thereafter claiming that the oral extension is void under the statute. *Daniels v. Rogers* (1905), 108 App. Div. 338, 96 N. Y. Supp. 642.

Where, in order to induce a sale of lands, the grantor at the time of the delivery of the deed executed and delivered to the grantee a memorandum in writing stating that the grantor at the grantee's election would repurchase the property for the same consideration at any time one year after the conveyance, with six per cent. interest per annum, the two instruments must be read together as part of one transaction, and the grantor sued for the specific performance of the contract to repurchase, cannot defend upon the ground that the memorandum was

not signed by the party who was to reconvey, as would otherwise be required by this section, providing that such memorandum must be subscribed by the grantor or his lawfully authorized agent. *Van Name v. Queens Land & Title Co.* (1909), 130 App. Div. 857, 115 N. Y. Supp. 905.

Where the invalidity of a contract void under the Statute of Frauds does not appear on the face of the complaint the defense can only be taken by answer, and the court cannot anticipate issues which may be raised by an answer not yet served. *Lasher v. McDermott* (1916), 173 App. Div. 79, 158 N. Y. Supp. 708.

Equity will not permit statute to be made instrument of fraud.—*Canda v. Totten* (1898), 157 N. Y. 281, 51 N. E. 989, revg. (1895), 87 Hun 72, 33 N. Y. Supp. 962; *Wood v. Village of Richfield Springs* (1914), 163 App. Div. 103, 148 N. Y. Supp. 498.

In order to prevent the Statute of Frauds from being used as a means of fraud, courts of equity will sometimes enforce a parol agreement for a re-conveyance of lands, and, after default in the performance of the agreement, will regard the grantee as a trustee *ex maleficio*. *Simis v. Simis* (1911), 146 App. Div. 655, 131 N. Y. Supp. 460.

Specific performance after part performance of agreement.—Specific performance of parol agreement for conveyance of real estate will be ordered, where after part performance by the party seeking relief, an action at law is not an adequate remedy. In such a case a court of equity acts upon the principle that not to allow effect to the part performance would be to allow the party permitting the acts to treat them as if the agreement had not been made. Whereby a refusal to execute a parol agreement, the other party, who has in part performed, cannot be placed in the same situation in which he was before such performance, then an irreparable injury is threatened and equity will intervene upon the ground that it would be a fraud if the transaction were not completed. *McKinley v. Hessen* (1911), 202 N. Y. 24, 95 N. E. 32, revg. 135 App. Div. 833, 120 N. Y. Supp. 257; *Ludwig v. Bungart* (1900), 48 App. Div. 613, 63 N. Y. Supp. 91.

Whether or not an oral agreement which requires for its fulfillment the conveyance of real estate will be enforced depends upon the nature of the contract itself and what has been done under it. *Conlon v. Mission of Immaculate Virgin* (1903), 87 App. Div. 165, 84 N. Y. Supp. 49.

Where a husband conveyed lands to his wife to qualify her as his surety upon an oral agreement that she reconvey to him when he has completed the contract and the liability upon the bond has ceased, equity will enforce such oral agreement notwithstanding the Statute of Frauds. The statute cannot be used as means of fraud or abuse of confidence, but the grantee will be treated as a trustee of the lands *ex maleficio*. *Gallagher v. Gallagher* (1909), 135 App. Div. 457, 120 N. Y. Supp. 18, *affd.* (1911), 202 N. Y. 572, 96 N. E. 1115.

It is a general rule that mere payment of the purchase money is not sufficient to authorize a judgment requiring the specific performance of a verbal agreement for the sale of lands, except in a case where an action at law to recover the amount paid would not, under the circumstances, give the purchaser an adequate remedy. But where the purchase money has been paid and possession under the contract has also been taken the contract will be specifically enforced, and to take a case out of this rule the circumstances must be exceptional. *Pawling v. Pawling* (1895), 86 Hun 502, 33 N. Y. Supp. 780, *affd.* (8196), 150 N. Y. 574, 44 N. E. 1127.

An oral contract for the conveyance or devise of real property is void under the statute unless there has been such performance on the part of the plaintiff as to take it out of the operation of the statute. Where the oral agreement is to convey the land upon the payment of a specified sum of money, such payment alone is not deemed a sufficient part performance, inasmuch as a recovery of the considera-

tion in an action at law would fully indemnify the party by whom the purchase price was paid. Where, however, the entire consideration has been paid and the purchaser has taken possession by consent of the vendor, has made improvements upon the land, paid the taxes and incurred expenditures which cannot easily be made good to him in an action at law, he will be entitled to enforce the contract in equity. *Ludwig v. Bungart* (1900), 48 App. Div. 613, 63 N. Y. Supp. 91; *Conlon v. Mission of Immaculate Virgin* (1903), 87 App. Div. 165, 84 N. Y. Supp. 49.

A part performance, in order to take a verbal contract to convey lands out of the statute, must be substantial, and is not sufficient unless it puts the party making the part performance in such a situation that it becomes a fraud upon him if the agreement be not fully performed. *Cooley v. Lobdell* (1894), 82 Hun 98, 31 N. Y. Supp. 202, *affd.* (1897), 153 N. Y. 596, 47 N. E. 783.

The payment of the consideration to the vendor, and the delivery by him of possession of the premises to the vendee, may in some cases, and not in others, be sufficient performance of a contract of sale of real estate to enable the purchaser to invoke the power of a court of equity to decree specific performance, but where the vendee in taking possession of the premises has done any act for which he could not be fully compensated in an action at law, he is entitled to have specific performance of the contract. Ordinarily the payment of the consideration, in whole or in part, could be recovered back in an action at law, but in case the vendor has in the meantime become insolvent, or if the Statute of Limitations has run against the vendee's claim, and the vendee cannot be restored to the same situation that he was in before the agreement, or when he has made improvements and paid taxes in reliance on the parol agreement, equity has power to compel specific performance. *Cooper v. Monroe* (1894), 77 Hun 1, 28 N. Y. Supp. 222.

When, in pursuance, and upon the faith, of a parol promise by the owner of real estate to convey the same, the promisee has taken actual possession and remained in occupation of the premises, and made permanent and valuable improvements thereon, which acts cannot be recalled so as to place the promisee in the same position as before, such performance on the part of the promisee takes the parol agreement out of the Statute of Frauds and entitles him to a specific performance of the promise to convey. *Young v. Overbaugh* (1894), 76 Hun 151, 27 N. Y. Supp. 553, *affd.* (1895), 145 N. Y. 158, 39 N. E. 712.

A verbal contract to give an easement is enforced only where it is conclusively proved and where one party has acted on it with the knowledge of the other party, so that the principle of estoppel justifies a court of equity in enforcing the agreement. *Title Guarantee & Trust Co. v. N. Y. Juvenile Asylum* (1909), 133 App. Div. 529, 118 N. Y. Supp. 302.

Agreement of mortgagee to purchase and convey to mortgagor, enforceable in equity.—Where the owner of property about to be sold at judicial sale enters into an agreement with his mortgagee for a valuable consideration and a promise not to bid or procure bidders, that the mortgagee shall bid in the property and hold it for him, the mortgagee, in an action in equity to compel performance, cannot take advantage of the Statute of Frauds and escape because his contract was not in writing. The party obtaining title obtains it through fraud, and equity will not permit the Statute of Frauds to be made the shield for fraudulent acts. Of course the fraud must exist in the obtaining of the title and not arise after the title has been procured. Nor can the principle be invoked in favor of one who has no interest in the land to be sold, for that would be a mere agreement to buy and convey without any element of fraud entering into it. *Congregation Kehal Adath v. Universal B. & C. Co.* (1909), 134 App. Div. 368, 119 N. Y. Supp. 1121.

Recovery for services rendered upon unenforceable contract to convey.—The plaintiff relying upon a promise by defendant to convey certain real estate to plaintiff's

wife in consideration of the plaintiff's repairing certain buildings upon such property, performed such services. Although the contract to convey is unenforceable under the Statute of Frauds, an implied promise to repay for the services rendered is raised, for the court will not allow the Statute of Frauds to be made an instrument of fraud; and plaintiff is entitled to the value of the services rendered. *Graham v. Graham* (1909), 134 App. Div. 777, 119 N. Y. Supp. 1013.

A party who renders services under an invalid oral contract to convey land in consideration thereof, which was repudiated, may recover the fair value of his services. *Banta v. Banta* (1905), 103 App. Div. 172, 93 N. Y. Supp. 393.

Recovery of money paid under void contract.—A person who has paid money upon a parol contract for the purchase of land which is void by the statute, cannot maintain an action to recover back the moneys so paid while the vendor is willing to perform. *Collier v. Coates* (1854), 17 Barb. 471.

A vendee of lands cannot recover earnest money upon the ground that the contract was not enforceable under the Statute of Frauds, because not signed by him. *Quinto v. Alexander* (1907), 123 App. Div. 1, 107 N. Y. Supp. 422.

Money paid upon a contract for leasing which is void only because of the want of statutory formalities cannot be recovered as money had and received where the defendant was willing to perform and to make the covenants in the lease satisfactory to the plaintiff. *Nasanowitz v. Hanf* (1896), 17 Misc. 157, 39 N. Y. Supp. 327.

Although the vendee of lands suing to enforce the specific performance of the vendor's oral contract to convey establishes that he paid a portion of the consideration, the oral contract is unenforceable by reason of the Statute of Frauds. The payment of the consideration for an oral contract to convey lands, standing alone, does not take the contract out of the statute; in addition to such payment the partial performance must be such that the party cannot be put in the same position as before, and the equitable rule contemplates some action on the part of the party himself from which he cannot recede without injury to himself and which cannot be compensated in damages. *Milholland v. Payne* (1915), 169 App. Div. 712, 155 N. Y. Supp. 773, *affd.* (1916), 218 N. Y. 675, 113 N. E. 1061.

Money actually paid in advance by the vendee to the vendor under a verbal contract for the sale of land cannot be recovered back upon the theory that the infirmity of the agreement worked a failure of consideration, with an implied promise by the vendor to restore the sum, where the vendor is prepared to perform, since the ability and willingness to perform furnished consideration for the payment and the implication of a promise to return it accordingly fails. *Fleischman v. Plock* (1897), 19 Misc. 649, 44 N. Y. Supp. 413; *Hann v. Brettler* (1906), 50 Misc. 647, 107 N. Y. Supp. 78.

The purchaser having bid at auction cannot recover the earnest money paid on the ground that the contract, resting in parol, was void within the Statute of Frauds. A vendee cannot recover a payment made to apply on the purchase price of lands under a parol contract which is void within the Statute of Frauds unless the vendor has repudiated the contract, or is unable or unwilling to perform. *Graham v. Healy* (1912), 154 App. Div. 76, 138 N. Y. Supp. 611.

Action to compel execution of lease; injunction.—The plaintiff in an action to compel the execution of a lease in accordance with an agreement between it and the agent of the owner is entitled to a temporary injunction. *Roskam-Scott Co. v. Thomas* (1916), 175 App. Div. 84, 161 N. Y. Supp. 776.

Action at law to enforce oral contract to devise; damages only recoverable.—In an action at law the court has no power to enforce an alleged oral contract made by a person since deceased whereby she agreed to devise lands in consideration of services rendered to her, such contract being void under the Statute of Frauds. The greatest relief which a court of law can grant in such action brought against

the executor of the promisor is a money judgment for the reasonable value of the services rendered. *Lasher v. McDermott* (1916), 173 App. Div. 79, 158 N. Y. Supp. 708.

§ 260. Effect of grant or mortgage of real property adversely possessed.—A grant of real property is absolutely void, if at the time of the delivery thereof, such property is in actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively. The provisions of this section do not apply to a grant of such property made to the people of the state of New York, nor to a person where the title granted to such person shall thereafter, by grant or mesne conveyance, become vested in said people. (*Amended by L. 1909, ch. 481, and L. 1910, ch. 628.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 225; originally revised from R. S., pt. 2, ch. 1, tit. 2, §§ 147, 148.

Construction.—This section should be strictly construed by reason of its severity. Under it the possession for a single day by a person claiming adverse to that of the grantor, whether such possession be known or unknown, avoids a conveyance. *Cornwell v. Clement* (1895), 87 Hun 50, 52, 33 N. Y. Supp. 866. It is not the policy of the law to give this section a construction and effect more liberal than its terms necessarily require. *Bissing v. Smith* (1895), 85 Hun 564, 570, 33 N. Y. Supp. 123.

Application.—This section as to adverse possession does not apply to the holding of a right pertaining to land, but only to the land itself. *Corning v. Troy Iron & Nail Factory* (1862), 39 Barb. 311, 321, *affd.* (1869), 40 N. Y. 191; *Glover v. Manhattan Railway Co.* (1883), 66 How. Pr. 77, 85, *affd.* (1884), 51 Super (19 J. & S.) It does not apply to a case where both parties claim under a common grantor, and the party in possession, by mistake in the construction of his deed, holds lands not embraced therein. *Harris v. Oakley*, 2 N. Y. Supp. 305 (1888).

Application of section to a conveyance by an executor acting under a power of sale given by his testator's will. *Bullard v. Bicknell* (1898), 26 App. Div. 319, 49 N. Y. Supp. 666.

Where it appears that defendant had an inclosed garden on the premises in question and that he fenced the remainder of the premises and refused to allow the plaintiff longer to get water from the spring upon them and there is an absence of any circumstances of any act or possession by the plaintiff; and thereafter with knowledge of defendant's claim he purchases the alleged outstanding titles and brings this action, the plaintiff's alleged title is within the latter and spirit of the Champerty Act and void. *McAuliff v. Hughes* (1909), 134 App. Div. 734, 119 N. Y. Supp. 507.

Mortgage by one out of possession.—Where a mortgage on real property is executed by one out of possession no action upon the mortgage can be maintained. The mortgagee must either sue upon the bond, or, if he desires to enforce his rights on the real estate, wait until the mortgagor or his representative has actually recovered possession thereof. *Hopkins v. Baker* (1910), 140 App. Div. 460, 462, 125 N. Y. Supp. 417.

Section does not apply to disputed boundaries. *Danziger v. Boyd* (1890), 120 N. Y. 628, 24 N. E. 482; *Clark v. Davis* (1892), 28 Alb. N. C. 135, 19 N. Y. Supp. 191; *Jones v. Hoyt* (1895), Hun 35, 32 N. Y. Supp. 625; *Allen v. Welch* (1879), 18 Hun 226. Nor to a conveyance to remedy a defect. *Fryer v. Rockefeller* (1876), 63 N. Y. 268. Nor to a conveyance by assignee. *Coleman v. Manhattan Beach Imp. Co.* (1883), 94 N. Y. 229. Nor to a conveyance from the state. *Candee v. Hayward* (1868), 37 N. Y. 653.

This section does not prevent the holder of the legal title, although not a perfect one, from procuring any other conveyance in support of his existing title. *Lambert v. Huber* (1898), 22 Misc. 462, 469, 50 N. Y. Supp. 793.

Judicial sales.—This section does not apply to judicial sales. *Smith v. Scholtz* (1877), 68 N. Y. 41, 53; *Truax v. Thorn* (1848), 2 Barb. 156, 159. Thus, a purchaser of land sold under a decree in a foreclosure action acquires a perfect title, although at the time the premises are in the actual possession of one claiming title thereto under a tax deed; and where the purchaser executes a mortgage to secure the purchase price such mortgage is valid, since the mortgagee is regarded as much a purchaser at the judicial sale as the mortgagor, and acquires the title, not from him, but through him as a mere conduit. The assignee of such a purchase-money mortgage who forecloses and bids in the premises acquires title thereto. *De Garmo v. Phelps* (1903), 176 N. Y. 455, 68 N. E. 873, revg. (1901), 64 App. Div. 590, 72 N. Y. Supp. 773.

The statute does not apply to judicial sales of an interest in real estate held adversely when ordered by a court of competent jurisdiction. *In re Downing* (1912), 192 Fed. 683.

Where a purchaser of real property at a mortgage foreclosure sale is in actual possession, claiming under a referee's deed, he is entitled to the fee of such property as against the subsequent grantee of the father of the mortgagors who claimed a life estate in such property, and who was not made a party to the foreclosure proceedings. *Eisemann v. Lapp* (1902), 38 Misc. 14, 76 N. Y. Supp. 695.

Grant is void if, at the time of the delivery, the land is in the actual possession of person claiming adverse title. *Gilman v. Dolan* (1906), 114 App. Div. 774, 100 N. Y. Supp. 186, affd. (1908), 193 N. Y. 677, 87 N. E. 1119; *Collins v. Buffalo, Lockport & Buffalo R. Co.* (1911), 145 App. Div. 148, 129 N. Y. Supp. 139. But only that part of a deed which violates the law is void. *Towle v. Smith* (1864), 2 Rob. 489, 494.

Where one who enters under an assessment lease subsequently grants the land in fee to another, who enters and holds under that grant, claiming title, the possession is adverse to that of the owner of the reversion, and a conveyance from the latter while the land is so held is void. *Sands v. Hughes* (1873), 53 N. Y. 287.

Possession of land under a deed given without right from the grantor is adverse to the original owners, and a subsequent deed executed by them during such adverse possession is void. *Sands v. Hughes* (1873), 53 N. Y. 287, 295. A deed given by one out of possession is absolutely void. *Merritt v. Smith* (1899), 27 Misc. 366, 58 N. Y. Supp. 851, affd. (1900), 50 App. Div. 349, 63 N. Y. Supp. 1068. A deed recorded at a time when another party is in adverse possession under a deed is absolutely void. *Green v. Horn* (1908), 128 App. Div. 686, 112 N. Y. Supp. 993.

The grantee of land held adversely to the grantor cannot maintain an action upon the deed against the person thus holding adversely. *Lowber v. Kelly* (1861), 17 Abb. Pr. 452, affd. (1862), 22 Super. (9 Bosw.) 494.

Actual possession under claim of adverse title.—What constitutes. See *Churchill v. Onderdonk* (1874), 59 N. Y. 134, 136; *Crary v. Goodman* (1860), 22 N. Y. 173; *Stevens v. Hauser* (1868), 39 N. Y. 302; *Christie v. Gage* (1877), 71 N. Y. 189;

Higinbotham v. Stoddard (1878), 72 N. Y. 94; *Danziger v. Boyd* (1890), 120 N. Y. 628, 24 N. E. 482; *Kneller v. Lang* (1893), 137 N. Y. 589, 33 N. E. 555; *Arents v. L. I. R. R. Co.* (1898), 156 N. Y. 1, 50 N. E. 422; *Nash v. Kemp* (1877), 12 Hun 592; *Moody v. Moody* (1878), 16 Hun 189; *Cornwell v. Clement* (1895), 87 Hun 50, 33 N. Y. Supp. 866; *Clarke v. Hughes* (1852), 13 Barb. 147, 151; *Sherry v. Frecking* (1855), 11 N. Y. Super. (4 Duer) 452, 454; *Bowie v. Brake* (1854), 10 N. Y. Super. (3 Duer), 35; *Saunders v. N. Y. Cent. & H. R. R. Co.* (1892), 48 N. Y. St. Rep. 381; *Zahn v. Dopp* (1892), 46 N. Y. St. Rep. 920, 19 N. Y. Supp. 863.

"Actual possession" of city lots, evidence insufficient to establish. *Kiowa Realty Co. v. Molenaar* (1917), 98 Misc. 694, 165 N. Y. Supp. 131.

Constructive possession is not sufficient. *Dawley v. Brown* (1880), 79 N. Y. 390; *Marsh v. Ne-ha-sa-ne Park Assn.* (1896), 18 Misc. 314, 321, 42 N. Y. Supp. 996, *revd.* (1898), 25 App. Div. 34, 49 N. Y. Supp. 384; *Clark v. Davis* (1892), 28 Abb. N. C. 135, 137, 19 N. Y. Supp. 191, 192.

Possession under specific title.—To constitute a violation of this section a possession under some specific title, which in itself is adverse to the title of the plaintiff must be shown. *Jones v. Hoyt* (1895), 85 Hun 35, 37, 32 N. Y. Supp. 625. It must be such as to necessarily exclude the idea of title in any other person. *Howard v. Howard* (1854), 17 Barb. 663; *Hoyt v. Dillon* (1855), 19 Barb. 644, 651. For the section does not apply where the adverse claimant does not claim under a specific title. *Biglow v. Biglow* (1899), 39 App. Div. 103, 56 N. Y. Supp. 794; *Finn v. Lally* (1896), 1 App. Div. 411, 37 N. Y. Supp. 437; *Newton v. McLean* (1863), 41 Barb. 285, 289; *Fish v. Fish* (1863), 39 Barb. 513, 515; *Sayres v. Rathbone* (1870), 9 Abb. P. N. S. 277, 280; *Clark v. Davis* (1892), 28 Abb. N. C. 135, 137, 19 N. Y. Supp. 191; *Hallas v. Bell* (1869), 53 Barb. 247, 248; *Sweetenham v. Leary* (1879), 18 Hun 284, 287; *Dawley v. Brown* (1880), 79 N. Y. 390; *Matter of Parks* (1878), 73 N. Y. 560, 567.

In order to make a deed void for champerty, where the lands are in the actual possession of a person claiming under title adverse to that of the grantor, he must claim under some specific title in order that his possession may be adverse. *Wilson v. Boyce* (1911), 143 App. Div. 782, 128 N. Y. Supp. 438.

The title of a possessor of lands in order to avoid the deed of an owner out of possession, must arise either (1) from a written instrument professing on its face or agreeing, to convey some title or interest in the land in question, by some person holding adversely, who therein assumes to have the legal title to a convey, and which is actually obligatory upon such person, or (2) from a judgment, decree or executed process of some court. *Chalmers v. Wright* (1866), 28 N. Y. Super. (5 Rob.) 713, 717.

The defense herein provided is unavailable to one who makes no claim of title but is simply in possession of the property not claiming to be rightfully in possession. It is not sufficient even that he may claim title, but must disclose some specific alleged title that the court may see that it is adverse to that of the grantor. *Belcher v. Belcher* (1909), 134 App. Div. 726, 119 N. Y. Supp. 144.

It is not necessary that the title of an adverse holder be valid, but the color of title must purport to convey a freehold estate and adverse to that under which the plaintiff asserts his right to the possession. *C. L. Nav. Co. v. Keuka Nav. Co.* (1885), 37 Hun 9, 12; *Smith v. Faulkern* (1888), 48 Hun 186, 189. The claim of title is sufficient, although such title subsequently turns out to be bad. *Jackson ex dem. Dunbar v. Todd* (1804), 2 Cal. 183. But a claim under an extinguished title, and not under an adverse one, is insufficient. *Barley v. Roosa* (1891), 13 N. Y. Supp. 209, 211, 35 N. Y. St. Rep. 898.

To avoid a deed under this section because of champerty the adverse possession must be under a claim of some specific title, not necessarily a good title, but still

a paper title as distinct from a general assertion of ownership, a title under some written instrument purporting to convey the lands to the claimant, or else some judgment, decree or executed process of a court. *Green v. Horn* (1913), 207 N. Y. 489, 101 N. E. 430.

Deed is good as to the parties.—*Cornwell v. Clement* (1895), 87 Hun 50, 33 N. Y. Supp. 866; *Livingston v. Proseus* (1842), 2 Hill 526, 528; *Hamilton v. Wright* (1868), 37 N. Y. 502; *Ward v. Reynolds* (1881), 25 Hun 386; *Johnson v. Snell* (1890), 34 N. Y. St. Rep. 177, 11 N. Y. Supp. 868; *Poor v. Horton* (1853), 15 Barb. 485, 497; *Pepper v. Haight* (1854), 20 Barb. 429, 439.

A deed given while another is in possession of the property claiming under an adverse title, although void as against the person in possession, is good as between the parties to the deed. *Sheridan v. Cardwell* (1911), 145 App. Div. 609, 130 N. Y. Supp. 638.

Adverse claimant may renounce benefit of section, although it was intended for his benefit. *Keneda v. Gardner* (1842), 4 Hill 469.

Rights of successor of grantee.—A deed made when no grantee is in actual adverse possession is void under this section and a *lis pendens* filed by the successor of the grantee in such void deed is not a cloud upon the recorded title which warrants a purchaser at foreclosure to refuse to complete his purchase. *Baecht v. Hevesy* (1906), 115 App. Div. 509, 101 N. Y. Supp. 413.

Pleading.—The objection that a deed is void under this section is a special defense and should be set up in the answer. *Ten Eyck v. Whitbeck* (1900), 55 App. Div. 165, 167, 66 N. Y. Supp. 921, *affd.* (1902), 170 N. Y. 564, 62 N. E. 1101.

Proof of actual possession required by this section to avoid a grant must be plain and unequivocal. *Saranac Land & Timber Co. v. Roberts* (1908), 125 App. Div. 333, 347, 109 N. Y. Supp. 547, *affd.* (1909), 195 N. Y. 303, 88 N. E. 753.

The question of adverse possession is one of fact for the jury. *Bissing v. Smith* (1895), 85 Hun 564, 570, 33 N. Y. Supp. 123.

In order for a plaintiff to bring an action of ejectment in the name of her grantor pursuant to section 1501 of the Code of Civil Procedure, the conveyance under which she claims must be void because the property was held adversely to the grantor. Such deed is void only when the lands are in the possession of a person claiming under a title adverse to that of the grantor at the time of the delivery. *Sheridan v. Cardwell* (1910), 141 App. Div. 854, 126 N. Y. Supp. 781.

See generally, *Smith v. Long* (1882), 12 Abb. N. C. 113, 120; *Vrooman v. Shepherd* (1852), 14 Barb. 441, 449; *Towle v. Remsen* (1877), 70 N. Y. 303; *Clute v. N. Y. C. & H. R. R. Co.* (1890), 120 N. Y. 267, 273, 24 N. E. 317; *Stoddard v. Whiting* (1871), 46 N. Y. 627, 634; *Becker v. Church* (1889), 115 N. Y. 562, 22 N. E. 748; *Pearce v. Moore* (1889), 114 N. Y. 256, 21 N. E. 419; *Learned v. Tallmadge* (1857), 26 Barb. 443, 454; *Monnot v. Husson* (1866), 39 How. 447, 453; *Hoopes v. Auburn Water Works Co.* (1885), 37 Hun 568, 575, *affd.* (1888), 109 N. Y. 635, 15 N. E. 742; *Ten Eyck v. Craig* (1874), 2 Hun 452, 460, *affd.* (1875), 62 N. Y. 406; *Hughes v. Hughes* (1894), 10 Misc. 180, 30 N. Y. Supp. 937; *Sandford v. Travers* (1869), 40 N. Y. 143; *Lakes Island Realty Co. v. McDermott* (1916), 96 Misc. 37, 160 N. Y. Supp. 450.

§ 261. Maintenance of telegraph or other electric wires raises no presumption of grant.—Whenever any wire or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication otherwise than by the aid of electricity, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or

L. 1909, ch. 52.

Conveyances and mortgages.

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justify a prescription of any perpetual right to, such attachment or extension.

Source.—L. 1886, ch. 40.

§ 262. **Conveyances with intent to defraud purchasers and incumbrancers void.**—A conveyance of an estate or interest in real property, or the rents and profits thereof, and every charge thereon, made or created with intent to defraud prior or subsequent purchasers or incumbrancers, for a valuable consideration, of the same real property, rents or profits, is void as against such purchasers and incumbrancers. Such a conveyance or charge shall not be deemed fraudulent in favor of a subsequent purchaser or incumbrancer, who, at the time of his purchase or incumbrance, has actual or legal notice thereof, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 226; originally revised from R. S., pt. 2, ch. 7, tit. 1, §§ 1, 2.

Actual or legal notice.—What constitutes. See *The Parker Mills v. Jacot* (1861), 21 N. Y. Super. (8 Bosw.) 161, 174.

Conveyance by husband to wife.—A husband cannot purchase property and place the same in his wife's name, and then prevent lienors or judgment creditors of his wife from treating the property as hers, in case she deeds it back without consideration, if she used the property as her own in creating the incumbrance. *Osborn v. Peace* (1914), 215 Fed. 181, 184.

See generally, *Whitney v. Allaire* (1848), 1 N. Y. 305; *Scott v. Guthrie* (1863), 25 How. Pr. 481, 482.

§ 263. **Conveyances with intent to defraud creditors void.**—A conveyance or assignment in writing or otherwise, of an estate, interest, or existing trust in real property, or the rents or profits issuing therefrom, or a charge on real property, or on the rents or profits thereof, made with the intent to hinder, delay or defraud creditors, or other persons, of their lawful suits, damages, forfeitures, debts or demands, or a bond or other evidence of debt given, suit commenced or decree or judgment suffered, with the like intent, is void as against every person so hindered, delayed or defrauded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 227; originally revised from R. S., pt. 2, ch. 7, tit. 3, § 1.

Fraudulent conveyance; what constitutes.—In case a person makes a voluntary conveyance or transfer of his property and is insolvent at the time, such voluntary conveyance or transfer is fraudulent as against his creditors, even though the transfer was without knowledge or notice that the transfer was insolvent. *Truesdell v. Bourke* (1898), 29 App. Div. 95, 97, 51 N. Y. Supp. 409, *affd.* (1900), 161 N. Y. 634, 57 N. E. 1127. But it is not sufficient to condemn a conveyance of land as a fraud upon creditors of the grantor that it was founded upon a valuable consideration; other facts must be proved, showing that the conveyance was made with a fraudulent intent. *Kain v. Larkin* (1892), 131 N. Y. 300, 307, 30 N. E. 105. See generally, *Welser v. Kling* (1899), 38 App. Div. 266, 57 N. Y. Supp. 48; *Sommers v. Cottentin* (1878), 26 App. Div. 241, 49 N. Y. Supp. 652; *P. & R. C. & I. Co. v. Devoy* (1898), 25 Misc. 640, 56 N. Y. Supp. 315.

Conveyances made by a husband to his wife are presumably fraudulent as to the husband's creditors. *Allee v. Slane* (1898), 26 App. Div. 455, 50 N. Y. Supp. 55.

Thus, a conveyance of land made in payment of a debt owing by the grantors upon understanding that the land is to be reconveyed to the wives of the grantors upon the payment of the debt and interest is fraudulent as against the creditors of the grantor. *Harris v. Osnowitz* (1898), 35 App. Div. 594, 55 N. Y. Supp. 172.

But where a husband, intending to make a family residence for his wife and children, conveys property, the value of which is not disproportionate to his means, to his wife for a nominal consideration, retaining sufficient property to satisfy all claims against him, the conveyance is not fraudulent as to creditors of the husband whose claims existed at the time of the conveyance. *Guy v. Craighead* (1899), 40 App. Div. 260, 57 N. Y. Supp. 1070.

Where a husband made a gift of real property to his wife and, having received the consideration of a subsequent sale made by her, bought other real property and had title conveyed to her, and after the wife again sold her real property and the husband had received the consideration he purchased other property and subsequently conveyed it to her, she must be considered to be a purchaser from him for a valuable consideration, although the express consideration for the last conveyance was love and affection and two dollars. *King v. Union Trust Co.* (1911), 148 App. Div. 110, 133 N. Y. Supp. 18, *affd.* (1913), 208 N. Y. 566, 101 N. E. 1108.

Defendant, the owner of certain real estate, his only property, purchased of plaintiff a stock of goods for which he was unable to pay, but did not take possession of them. Thereafter he mortgaged his real estate to secure a present loan. His wife joined in the mortgage and about two weeks later received a conveyance of said real estate by mail with knowledge that plaintiff was making demands for payment of the balance due on the purchase price of the stock of goods, and was threatening suit. In an action to set aside the conveyance, held, that a finding of the jury that said conveyance was made by defendant with intent to defraud plaintiff, his creditor, should be approved; also, that a finding that the wife received the conveyance without any intent on her part to defraud plaintiff should be set aside, it clearly appearing from the evidence that she had actual knowledge of her husband's fraudulent intent in making such conveyance. *Cain v. Snyder* (1912), 76 Misc. 636, 135 N. Y. Supp. 443.

Transfer of husband's property by wife.—A wife cannot transfer property, which in reality belongs to her husband, in order merely to prevent her creditors from collecting their debts if she had incurred those debts through reliance upon her ownership, if this was known or ought to have been known to her. *Osborn v. Peace* (1914), 215 Fed. 181, 185.

A confession of judgment with intent to hinder, delay or defraud creditors is void. *Claffin Co. v. Arnheim* (1895), 87 Hun 236, 241, 33 N. Y. Supp. 1037.

Presumption of fraud.—A voluntary conveyance by one indebted at the time it is made is presumptively fraudulent as to existing creditors. *Bushby v. Berkeley* (1914), 85 Misc. 178, 148 N. Y. Supp. 121.

Burden of proof.—The question of what constitutes an intention to hinder, delay and defraud creditors by a transfer of property is one of fact. Where property is transferred by a husband to his wife for the purpose of preventing the dissipation of the property by the husband, and also to pay the wife money owing to her, the burden of proof is upon the wife in a creditor's action to show that the transfer is in good faith. *Tanner v. Eckhardt* (1905), 107 App. Div. 79, 94 N. Y. Supp. 1013.

§ 264. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.—A conveyance, charge, instrument or proceeding, declared by this article to be void as against creditors, purchasers or

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incumbrancers, is equally void as against their heirs, successors, personal representatives or assigns.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 228; originally revised from R. S., pt. 2, ch. 7, tit. 3, § 3.

§ 265. **Fraudulent intent, question of fact.**—The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or incumbrancers, solely on the ground that it was not founded on a valuable consideration.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 229; originally revised from R. S., pt. 2, ch. 7, tit. 3, § 4.

Fraudulent intent.—The statute relating to fraudulent transfers and conveyances which declares that the question of fraudulent intent arising thereunder shall be deemed a question of fact and not of law does not interfere with the right of the court to direct a verdict, provided the fraudulent intent is conclusively established on the face of the instrument of transfer or by the uncontradicted verbal evidence. *Bulger v. Rosa* (1890), 119 N. Y. 459, 464, 24 N. E. 853.

The intent is the one thing upon which the validity of the conveyance must be determined when particularly in review under this section. The want of a valuable consideration is not alone sufficient to sustain the charge of fraudulent intent. It is, however, an important fact to be considered when searching for the intent. *Citizens' Natl. Bank, etc., v. Fonda* (1896), 18 Misc. 114, 115, 41 N. Y. Supp. 112.

A valuable consideration does not necessarily mean full value; the statute is complied with if the sum is a substantial amount when compared with the value of the property transferred. *Greenough v. Greenough* (1897), 21 Misc. 727, 728, 47 N. Y. Supp. 1096.

The payment of a valuable consideration upon a transfer of property is not as a proposition of law inconsistent with the existence of an intent to defraud. *Billings v. Russell* (1886), 101 N. Y. 226, 4 N. E. 531. Thus, a transfer of property made by a husband to his wife with intent to hinder, delay or defraud creditors cannot be upheld by proof that the transfer was made in consideration of a bona fide debt due to the wife from her husband. *Vogedes v. Beakes* (1899), 38 App. Div. 380, 56 N. Y. Supp. 662.

Presumption of fraud arises from a voluntary conveyance by one indebted at the time. *Smith v. Reid* (1892), 134 N. Y. 568, 31 N. E. 1082; *Citizens' Nat. Bank v. Fonda* (1876), 18 Misc. 114, 116, 41 N. Y. Supp. 112. But see *Jackson v. Badger* (1888), 109 N. Y. 632, 16 N. E. 208.

Fraud is established where both insolvency and want of consideration are shown. *Lehrenkraus v. Bonnell* (1910), 138 App. Div. 493, 122 N. Y. Supp. 866, revd. (1910), 199 N. Y. 240, 92 N. E. 637.

See generally, *Goff v. Alexander* (1897), 20 Misc. 498, 501, 45 N. Y. Supp. 737; *Fuller v. Brown* (1894), 76 Hun 557, 559, 28 N. Y. Supp. 189; *Carr v. Johnson* (1891), 36 N. Y. St. Rep. 783, 12 N. Y. Supp. 799.

§ 266. **Rights of purchaser or incumbrancer for valuable consideration protected.**—This article does not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 230; originally revised from R. S., pt. 2, ch. 7, tit. 3, § 5.

Purchasers for valuable consideration.—An assignee in trust for the benefit of creditors is not “a purchaser for a valuable consideration,” however innocent he may be of participation in the fraud intended by the assignor. *Griffin v. Marquardt* (1858), 17 N. Y. 28, 30. See also as to who are bona fide purchasers. *H. B. Claflin Co. v. Arnheim* (1895), 87 Hun 236, 33 N. Y. Supp. 1037; *Bush v. Roberts* (1888), 111 N. Y. 278, 18 N. E. 732; *Starin v. Kelly* (1882), 88 N. Y. 419; *Murphy v. Briggs* (1882), 89 N. Y. 446.

A consideration of one dollar expressed in a deed and actually paid is insufficient to make the grantee a purchaser for a valuable consideration. *Dunn v. Dunn* (1912), 151 App. Div. 800, 136 N. Y. Supp. 282.

Actual notice of fraud is necessary to impair or avoid the title of a purchaser for a valuable consideration. *Jacobs v. Morrison* (1892), 136 N. Y. 101, 105, 32 N. E. 552. The phrase “notice of the fraudulent intent,” as used in this section, refers to actual and not constructive notice. *Stearns v. Gage* (1879), 79 N. Y. 102; *Wilson v. Marion* (1893), 25 N. Y. Supp. 1066, *affd.* (1895), 147 N. Y. 589, 42 N. E. 190.

Fraud cannot be imputed to a purchaser of land for valuable consideration by the application of the strict rules of constructive notice. *Parker v. Conner* (1883), 93 N. Y. 118.

Effect of knowledge sufficient to put purchaser upon inquiry.—Where the facts within the knowledge of the purchaser are of such a nature as in reason to put him upon inquiry and to excite the suspicion of an ordinarily prudent person, and he fails to make any investigation, he will be chargeable with that knowledge which a reasonable inquiry, as suggested by the facts, would have revealed. *Anderson v. Blood* (1897), 152 N. Y. 285, 293, 46 N. E. 493.

Where a purchaser has knowledge of any fact sufficient to put him upon inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim to be considered a bona fide purchaser. *Williamson v. Brown* (1857), 15 N. Y. 354; *Parker v. Conner* (1883), 93 N. Y. 118, 124.

§ 267. **Conveyances with power to revoke, determine or alter.**—A conveyance of, or charge on, an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and incumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of the power reserved or expressed in the prior conveyance or charge. Where a power to revoke a conveyance of real property or the rents and profits thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or incumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared. If a conveyance to a purchaser or incumbrancer, under this section, be made before the person making it is entitled

to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 231; originally revised from R. S., pt. 2, ch. 7, tit. 1, §§ 3-5.

The presumption of fraud arising from the nonchange of possession is not overcome, as a matter of law, by proof of payment of adequate consideration, although it is strong evidence for the consideration of the jury. *Wallace v. Nodine* (1890), 32 N. Y. St. Rep. 657, 10 N. Y. Supp. 919, 924.

§ 268. **Disaffirmance of fraudulent act by executor and others.**—An executor, administrator, receiver, assignee or other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or individual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 232; originally revised from L. 1858, ch. 314, as amended by L. 1894, ch. 740; L. 1889, ch. 487.

Application of section.—This section has no application to an action by a *cestui que trust* against an executor or trustee of an express trust and his fraudulent grantee or vendee to annul a fraudulent conveyance of the trust property. Such a suit may be maintained without authority of any statute. *Agne v. Schwab* (1908), 123 App. Div. 746, 108 N. Y. Supp. 487.

This section confers no power upon executors and administrators to bring action to remove a cloud upon title. *Rosseau v. Bleau* (1892), 131 N. Y. 177, 182, 30 N. E. 52.

A fraudulent conveyance cannot be avoided for the benefit of the next of kin. *Lore v. Dierkes* (1884), 16 Abb. N. C. 47, 54.

Action to set aside conveyance.—To maintain an action to set aside a conveyance under this section, without having first obtained a judgment and to establish the claim on the trial, if disputed, its existence is to be tested by no more favorable standard than in an action brought to establish it in the first instance.

The fact that the ultimate relief under the statute is to be administered by a court of equity, does not affect the manner in which the claim must be established. *Mertens v. Mertens* (1905), 48 Misc. 235, 96 N. Y. Supp. 785, *affd.* (1906), 113 App. Div. 905, 99 N. Y. Supp. 1142.

A creditor's action to set aside a fraudulent conveyance must be brought, not for the creditor himself, individually, but on behalf of all the creditors of the decedent. *Matteson v. Palser* (1903), 173 N. Y. 404, 66 N. E. 110, *modf.* (1900), 56 App. Div. 91, 67 N. Y. Supp. 612.

The creditor of a decedent may sue on his own behalf and for the benefit of all other creditors of the decedent to set aside conveyances formerly made by the decedent for the purpose of defrauding creditors without a prior demand on the debtor's executor to bring the suit. *Calkins v. Stedman* (1911), 146 App. Div. 202, 130 N. Y. Supp. 932. But, if the plaintiff is not a creditor he cannot maintain the action. *Ga Nun v. Palmer* (1913), 159 App. Div. 86, 89, 144 N. Y. Supp. 457, *modf.* (1915), 216 N. Y. 603, 111 N. E. 223.

An assignee for the benefit of creditors may maintain an action to set aside fraudulent conveyances as provided in this section. *Wile v. Cauffman* (1899), 39 App. Div. 206, 208, 57 N. Y. Supp. 240.

An assignee in bankruptcy may maintain an action as provided in this section. *Southard v. Benner* (1878), 72 N. Y. 424.

See, generally, *Truesdell v. Bourke* (1898), 29 App. Div. 95, 51 N. Y. Supp. 409, *affd.* (1900), 161 N. Y. 634, 57 N. E. 1127; *Harvey v. McDonnell* (1889), 113 N. Y. 526, 21 N. E. 695; *McNaney v. Hall* (1895), 86 Hun 415, 33 N. Y. Supp. 518, *affd.* (1899), 159 N. Y. 544, 54 N. E. 1093.

§ 269. When remainderman may pay interest owed by life tenant.—Whenever real property held by any person for life is incumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 233; originally revised from L. 1894, ch. 315.

See *Haas v. Kuhn* (1893), 67 Hun 435, 22 N. Y. Supp. 347; *Wilcox v. Quinby* (1893), 73 Hun 524, 26 N. Y. Supp. 114.

§ 270. Powers of courts of equity not abridged.—Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 234; originally revised from R. S., pt. 2, ch. 7, tit. 1, § 10.

Effect of section.—See *Sprague v. Cochran* (1894), 144 N. Y. 104, 113, 38 N. E. 1000; *Robbins v. Robbins* (1882), 89 N. Y. 251, 255; *McCotter v. Lawrence* (1875), 4 Hun 107, 113.

"Part performance."—What constitutes. See *Ladd v. Stevenson* (1887), 43 Hun 541, *affd.* (1889), 112 N. Y. 325, 19 N. E. 842; *Canda v. Totten* (1859), 87 Hun 72, 33 N. Y. Supp. 962, *revd.* (1898), 157 N. Y. 281, 51 N. E. 989; *Traphagen v. Burt* (1876), 67 N. Y. 30; *Dunckel v. Dunckel* (1890), 56 Hun 25, 8 N. Y. Supp. 888; *Gouge v. Gouge* (1898), 26 App. Div. 154, 49 N. Y. Supp. 879; *Richmond v. Foote* (1870), 3 Lans. 244, 249; *Rathbun v. Rathbun* (1849), 6 Barb. 98, 106. See notes to § 259, under heading "Specific performance after part performance of agreement."

An oral contract that, whenever specified real property should be sold, the vendor would pay to a real estate agent \$5,000 in full payment for services theretofore and which thereafter should be rendered, and in case the property should be disposed of for cash, payment to be made in cash; but, if for land, then such agent "should be entitled therein at the same time to such a portion thereof as five thousand dollars (\$5,000) should bear to its value," although a contract for the rendition of services, is equally a contract for the sale of land or an interest in land; and, where the property is subsequently exchanged for other real estate, the rendition of the services called for by the contract is not such a part performance thereof under the Statute of Frauds as will authorize a court of equity to decree a specific performance of its provisions, since the value of the services rendered may be recovered in an action at law. *Russell v. Briggs* (1901), 165 N. Y. 500, 59 N. E. 303, 53 L. R. A. 556.

Courts of equity will enforce specific performance of a parol contract concerning lands when it has been performed on one side, and when otherwise one party would be able to defraud the other. *Murphy v. Whitney* (1893), 69 Hun 573, 576, 23 N. Y. Supp. 1134, *affd.* (1887), 104 N. Y. 541, 35 N. E. 930, 24 L. R. A. 123; *Ryan v. Dox* (1866), 34 N. Y. 307, 311; *Miller v. Ball* (1876), 64 N. Y. 286, 291.

Equity cannot under any circumstances compel the performance of an agreement vague in its terms and standing upon testimony the accuracy of which the witness himself is uncertain. *Crouse v. Frothingham* (1885), 97 N. Y. 106, 112.

The doctrine of equity recognized by this section, which grants specific performance of an oral contract within the Statute of Frauds, which has been partly performed, is based upon the ground that otherwise one party would be enabled to practice a fraud upon the other. *Canda v. Totten* (1898), 157 N. Y. 281, 51 N. E. 989.

In an action at law the court has no power to enforce an alleged oral contract made by a person since deceased whereby she agreed to devise lands in consideration of services rendered to her, such contract being void under the Statute of Frauds. *Lasher v. McDermott* (1916), 173 App. Div. 79, 158 N. Y. Supp. 708.

Section cited.—*Kincaid v. Kincaid* (1895), 85 Hun 141, 144, 32 N. Y. Supp. 476, *affd.* (1898), 157 N. Y. 715, 53 N. E. 1126; *Bauman v. Holzhausen* (1882), 26 Hun 505, 507; *Beardsley v. Duntley* (1877), 69 N. Y. 577, 583; *Freeman v. Freeman* (1870), 43 N. Y. 34, 39; *De Pierres v. Thorn* (1859), 17 N. Y. Super. (4 Bosw.) 266, 276; *Astor v. L'Amoureux* (1851), 6 N. Y. Super. (4 Sandf.) 524, 529, *revd.* (1853), 8 N. Y. 107; *Wood v. Mulock* (1882), 48 N. Y. Super. (16 J. & S.) 70, 79.

§ 271. Construction of covenants in mortgages on leases of real property and bonds.—In mortgage on leases of real property and in bonds secured thereby, the following or similar covenants or agreements must be construed as follows:

1. *In default of payment, mortgagee to have power to sell.*—A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee or obligee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor or obligor shall well and truly pay unto the mortgagee or obligee the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall be made in the payment of the said sum of money therein mentioned, or in the interest which shall accrue thereon, or of any

part of either, that then and from thenceforth it shall be lawful for the said mortgagee or obligee, his legal representative or assigns, to sell, transfer and set over, all the rest, residue and remainder of the said term of years then yet to come, and all other, the right, title and interest of the said mortgagor or obligor of, in and to the same, at public auction, according to the act in such case made and provided. And as the attorney of the said mortgagor or obligor for that purpose by these presents duly authorized, constituted and appointed, to make, seal, execute and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer or other conveyance in the law, for the said premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said mortgagor or obligor, his legal representatives or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said mortgagor or obligor, and against all persons claiming or to claim the premises or any part thereof, by, from or under him or them, or any of them.

2. *Mortgagor to keep buildings insured.*—A covenant “that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee,” must be construed as meaning that the said mortgagor or obligor shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurance, and in an amount approved by the said mortgagee or obligee and his assigns, and either assign the policy and certificates thereof or have such insurance made payable to the said mortgagee or obligee or his assigns, and in default thereof it shall be lawful for the said mortgagee or obligee and his assigns to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with legal interest.

3. *Mortgagor to pay rent and charges on premises.*—A covenant that the mortgagor “will pay the rent and other charges mentioned in and made payable by said indenture of lease within days after said rent or charges are payable,” must be construed as meaning that the said mortgagor or obligor and his legal representatives and assigns, will pay or cause to be paid, and discharge all rent and rents mentioned in and made payable by the indenture of lease aforesaid, and also all taxes, assessments or other charges that now are a lien, or hereafter shall or may be levied, assessed or imposed and become a lien upon the premises above described or any part thereof; and in default thereof, for the space of after such taxes or assessments or after the said rent or rents, or any of them shall have become due and

payable by the terms of said lease or by law, then and in each and every such case the said mortgagee or obligee, his legal representatives or assigns may, at option, and without notice, pay such rent or rents, taxes, assessments or other charges and expenses, and the amount so paid, and interest thereon, from the time of such payment, shall forthwith be due and payable from the said mortgagor or obligor, his legal representatives or assigns, to the said mortgagee or obligee, his legal representatives or assigns, and shall be deemed to be secured by these presents, and shall be * collectable in the same manner, and at the same time, and upon the same conditions as the interest then next maturing upon the principal sum hereinbefore mentioned.

4. *Agreement that whole sum shall become due.*—The words “And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any installment of principal or other default in the payment of interest for days, or after default in the payment of any rent or other charge made payable by said indenture of lease for days, or after default in the payment of any tax or assessment for days after notice and demand,” must be construed as meaning that should any default be made in the payment of any installment of principal or any part thereof, or of said interest or any part thereof, or of any rent or other charge made payable by said indenture or lease, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due and payable, and should the said interest, rent or other charge aforesaid, remain unpaid and in arrear for the space of days, or such tax or assessment remain unpaid and in arrear for days after written notice by the mortgagee or obligee, his executors, administrators or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, rent and other charges paid by the mortgagee or obligee, shall, at the option of the said mortgagee or obligee, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 235, as added by L. 1898, ch. 338.

Consolidators' note.—“Or,” in subd. 3, changed to “of” to comply with provision in form of mortgage contained in § 273.

The words “in and,” in subd. 4, of the former section, omitted to comply with provisions in form of mortgage contained in § 273, from which quotation here made is taken.

* So in original.

Effect.—Subd. 2, of this section, in effect repeals subd. 3, of § 254, ante, as it existed prior to the amendment of 1917. *Heal v. Richmond County Savings Bank* (1908), 127 App. Div. 428, 431, 111 N. Y. Supp. 602, *affd.* (1909), 196 N. Y. 549, 89 N. E. 1101.

Construction of this section with section 254, ante.—This section did not supersede section 254, *ante*, although it was enacted two years after it. Section 254 is expressly limited in effect to mortgages on leases on real property and bonds secured thereby as distinguished from mortgages on the freehold. The two sections may be read together, and while section 271, subdivision 2, relating to mortgages on leases, contains no express provision that for a failure to pay the premium of insurance or assign to the mortgagee a satisfactory policy, he shall have the right to elect to demand payment of the entire principal sum, section 254 does confer upon him such right if he brings himself within its provisions. *Bieber v. Goldberg* (1909), 133 App. Div. 207, 117 N. Y. Supp. 211.

Right of mortgagee to insure mortgaged premises.—The mortgagee may only make such insurance from year to year. He has no right to effect insurance for a longer term and demand that the mortgagor should pay the premium which he had paid for this long term policy and in default thereof be liable to be called upon to pay the entire principal sum of the mortgage. Such an act is outside the strict letter of the contract and such a demand is unreasonable. An action of foreclosure is equitable in its nature, and an election to demand payment of a principal sum will not be enforced if unconscionable. *Bieber v. Goldberg* (1909), 133 App. Div. 207, 117 N. Y. Supp. 211.

§ 272. **Construction of grant of appurtenances, and all of the rights and estate of the mortgagor.**—In any mortgage on a lease of real property the words “together with the appurtenances and all the estate and rights of the part of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease,” must be construed as meaning, together with all and singular the edifices, buildings, rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and demand whatsoever, as well in law as in equity, of the said mortgagor or obligor, of, in and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and the renewal therein provided for, and every clause, article and condition therein expressed and contained.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 236, as added by L. 1898, ch. 338.

§ 273. **What form of mortgage on lease of property.**—The use of the following form of instrument for mortgages on leases of real property is lawful, but this section does not prevent or invalidate the use of other forms.

SCHEDULE D.

MORTGAGE ON LEASE OF REAL PROPERTY.

This indenture, made the day of, in the year one thousand

..... hundred and, between of (insert residence) of the first part and of (insert residence) of the second part; whereas did, by a certain indenture of lease, bearing date the day of, in the year one thousand nine hundred and, demise, lease and to farm let unto and to executors, administrators and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances; to have and to hold the same unto the said and to executors, administrators and assigns, for and during and until the full end and term of years, from the day of, one thousand nine hundred and, fully to be complete and ended, yielding and paying therefor unto the said and to or assigns, the yearly rent or sum of

And whereas, the said part of the first part justly indebted to the said part.. of the second part, in the sum of lawful money of the United States of America, secured to be paid by certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of on the day of, nineteen hundred and and the interest thereon to be computed from at the rate of per centum per annum and to be paid

It being thereby expressly agreed that the whole of the said principal sum shall become due at the option of the mortgagee or obligee after default in the payment of interest, taxes or assessments or rents as hereinafter provided.

Now this indenture witnesseth that the said part.. of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of the sum of one dollar, paid by the said part.. of the second part, the receipt whereof is hereby acknowledged, doth grant and release, assign, transfer and set over unto said part.. of the second part, and to his heirs (or successors) and assigns forever.

(Description.)

Together with the appurtenances and all the estate and rights of the part.. of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease.

To have and to hold the said indenture of lease and renewal, and the above granted premises, unto the said part.. of the second part, his heirs and assigns, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, in said indenture of lease and in the renewals therein provided for; subject, nevertheless, to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always that if the said part.. of the first part shall pay unto the said part.. of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted, shall cease, determine and be void.

And the said part.. of the first part covenant.. with the said part.. of the second part as follows:

First. That the part.. of the first part will pay the indebtedness as hereinbefore provided.

And if default shall be made in the payment of any part thereof the said part.. of the second part shall have power to sell the premises therein described according to law.

Second. That the said premises now are free and clear of all incumbrances whatsoever, and that ha.. good right and lawful authority to convey the same in manner and form hereby conveyed.

Third. That the part.. of the first part will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee.

Fourth. That the part.. of the first part will pay the rents and other charges mentioned in and made payable by said indenture of lease within days after said rent or charges are payable.

Fifth. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said mortgagee or obligee after default in the payment of any installment of principal, or after default in the payment of interest for days, or after default in the payment of any rent or other charge made payable by said indenture of lease for days, or after default in the payment of any tax or assessment for days after notice and demand.

In witness whereof, the said part.. of the first part to these presents ha.. hereunto set hand.. and seal.. the day and year first above written.

Sealed and delivered }
in the presence of }

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 237, as added by L. 1898, ch. 338.

§ 274. **Transfers and mortgages of interest in decedents' estates.**—Every conveyance, assignment, or other transfer of, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as hereinafter provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded. If such interest is entirely in the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the clerk of the county where such real property is situated. If such interest is in both the personal and the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of ad-

ministration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same and also in the office of the said county clerk. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent, in a book to be kept for that purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio.

Source.—L. 1904, ch. 692, as amended by L. 1908, ch. 173.

Consolidators' note.—Former art. 9, "descent of real property." This article has been removed from the Real Property Law and has been placed in the Decedent Estate Law. The same treatment has been made of the statute of distribution in the Code of Civil Procedure which has been placed in the Decedent Estate Law. It has always been confusing to have the statute of descent in the Real Property Law and the statute of distribution in the Code of Civil Procedure. The latter does not belong in the Code of Civil Procedure. The statute, like much of the other material in the Code of Civil Procedure, is substantive in character and should be removed. It is thought that the placing of both the statute of decedent and the statute of distribution in the Decedent Estate Law would be the best treatment of the subject.

Burden of proving notice of earlier but unrecorded transfer.—This section invalidates an earlier unrecorded transfer as to subsequent transferees in good faith, that is to say, transferees without notice of earlier rights and the transfers to whom shall be first duly recorded. Presumptively those claiming under recorded transfers are transferees in good faith as against transferees earlier in time but having transfers unrecorded or of later record; and the burden therefore is upon him who claims under an unrecorded transfer, or one of later record, not hostile to one later in time but first recorded, to show that the latter was taken with notice, on the part of the transferee thereunder, of the earlier one. *Leask v. Hoagland* (1909), 64 Misc. 156, 118 N. Y. Supp. 1035, revd. on other grounds (1910), 136 App. Div. 658, 121 N. Y. Supp. 197.

§ 275. **Assignment of mortgage required in lieu of certificate of discharge.**—Whenever a mortgage upon real property shall be due and payable the mortgagee or the owner and holder of the mortgage shall execute and deliver to any person or persons, or corporation, named by the owner of the land upon which the same is a lien, an assignment of the mortgage duly executed which may by its terms be without recourse to the assignor in any event and discharge such assignor from any liability thereunder to the assignee; provided a demand has been made of the holder of the mortgage by the owner of the land upon which the same is a lien for such assignment in lieu of a certificate of discharge of the same, and the full amount of principal and interest due on the mortgage and the usual fee for drawing the assignment is tendered or paid. But nothing in this section contained shall require such execution and delivery of an assignment of the mortgage in lieu of a certificate of discharge where the owner and holder of the mortgage so due and payable also holds or has a junior or subsequent mortgage or other lien on the same property. (*Added by L. 1914, ch. 408 and amended by L. 1915, ch 493.*)

§ 276. **Apportionment of rents, annuities, dividends and other payments.**—

All rents reserved on any lease and all annuities, dividends and other payments of every description made payable or becoming due at fixed periods under any instrument shall be apportioned so that on the death of any person interested in such rents, annuities, dividends or other such payments, or in the estate or fund from or in respect to which the same issues or is derived, or on the determination or transfer by any other means of the interest of any such person, he, or his executors, administrators or assigns, and the person who thereupon becomes entitled to such rents, annuities, dividends or other payments or the estate or fund from or in respect of which the same issues or is derived, shall each be entitled to a proportion of such rents, annuities, dividends and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof to the time of such determination or transfer as the case may be, including the day of such death or of such determination or transfer, after making allowance and deductions on account of charges on such rents, annuities, dividends and other payments. If any such payment become due or be collected after such determination or transfer every such person or his executors, administrators or assigns shall have the same remedies at law and in equity for recovering such apportioned parts of such rents, annuities, dividends and other payments, when the entire amount of which such apportioned parts form part, becomes due and payable and not before, as he or they would have had for recovering and obtaining such entire rents, annuities, dividends and other payments, if entitled thereto; but the persons liable to pay rents reserved by any lease or demise, or the real property comprised therein shall be resorted to for such apportioned parts, but the entire rents of which such apportioned parts form part must be collected and recovered by the person or persons who, but for this section, would have been entitled to the entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this section. If any such payment shall have been collected before such determination or transfer, then the amount apportionable as herein provided shall be paid or allowed immediately, to the person entitled thereto, and may be recovered from the person who shall have collected the same. This section shall not apply to any case in which it shall be expressly stipulated that no apportionment be made, or to any sums made payable in policies of insurance of any description or under annuity contracts issued by life insurance companies. (*Added by L. 1916, ch. 313.*)

ARTICLE IX.

RECORDING INSTRUMENTS AFFECTING REAL PROPERTY.

Section 290. Definitions; effect of article.

291. Recording of conveyance.

292. By whom conveyances must be acknowledged or proved.

L. 1909, ch. 52. Recording instruments affecting real property.

§ 290.

293. Recording of conveyances heretofore acknowledged or proved.
294. Recording executory contracts and powers of attorney.
295. Recording of letters patent.
296. Recording copies of instruments which are in secretary of state's office.
297. Certified copies may be recorded.
298. Acknowledgments and proofs within the state.
299. Acknowledgments and proofs in other states.
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305. Compelling witnesses to testify.
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308. When certificate must be under seal.
309. Acknowledgment by corporation and form of certificate.
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312. Contents of certificate of authentication.
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315. Recording books.
316. Indexes.
317. Order of recording.
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319. Time of recording.
320. Certain deeds deemed mortgages.
321. Recording discharge of mortgage.
322. Recording discharge of mortgage in counties embraced in cities of first class.
323. Recording discharge of mortgage in counties embraced in cities of first class where property lies in more than one of such counties.
324. Effect of recording assignment of mortgage.
325. Recording of conveyances made by treasurer of Connecticut.
326. Revocation to be recorded.
327. Penalty for using long forms of covenants.
328. Certain acts not affected.
329. Actions to have certain instruments canceled of record.
330. Officers guilty of malfeasance liable for damages.
331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.
332. The record of certain conveyances validated.
333. When conveyances of real property not to be recorded.
- * 333. Discharge of mortgage; proceedings for.
334. Maps to be filed; penalty for non-filing.

§ 290. Definitions; effect of article.—1. The term "real property," as

* So in original.

§ 290. Recording instruments affecting real property. L. 1909, ch. 52.

used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

2. The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate.

3. The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument postponing or subordinating a mortgage lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property.

4. The term "recording officer" means the county clerk of the county, except in the counties of New York, Kings or Westchester, where it means the register of the county.

5. This article does not apply to leases for life or lives, or for years, heretofor made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 240, as amended by L. 1905, ch. 449; originally revised from R. S., pt. 2, ch. 1, tit. 2, § 114; R. S., pt. 2, ch. 3, §§ 36-39, 42, 43.

Consolidators' note.—The only change made in this section is to separate the sentences into numbered paragraphs, according to the original of the section (1 R. S., 736, § 114; 1 R. S., 762, §§ 36, 37, 38, 39; 1 R. S., 763, § 42).

The late revisers made but one paragraph, thus obscuring the separate elements of the various definitions.

References.—Other definitions in this chapter, Real Property Law, §§ 1, 240.

Term "real property" defined.—*Mayor v. Mable* (1855), 13 N. Y. 151, 158.

Chattels real.—Mortgage on lease of real property is a chattel real. *People ex rel. Elias Brewing Co. v. Gass* (1907), 120 App. Div. 147, 104 N. Y. Supp. 885, *affd.* (1908), 190 N. Y. 565, 83 N. E. 1129.

A lease for five years is included within the definition of real property, and does not lose its character after the expiration of two years. *People ex rel. Elias Brewing Co. v. Gass* (1907), 53 Misc. 363, 104 N. Y. Supp. 884, *affd.* (1907), 120 App. Div. 147, 104 N. Y. Supp. 885, *affd.* (1908), 190 N. Y. 565, 83 N. E. 1129.

Purchaser.—A mortgagee is not a purchaser within the meaning of the statute. *Berry v. Mut. L. Ins. Co.* (1817), 2 Johns. Ch. 603, 612. But where a mortgage which has been assigned, but the assignment not recorded, is satisfied of record by the mortgagee, a subsequent mortgagee is a "subsequent purchaser," within the recording act; and as to him the assignment is void. *Van Keuren v. Corkins* (1876), 66 N. Y. 77.

An assignee of a mortgage becomes a "purchaser." *Baker v. Thomas* (1891), 61 Hun 17, 15 N. Y. Supp. 359; *Gray v. Delpho* (1916), 97 Misc. 37, 162 N. Y. Supp. 194.

One to whom the discharge of a mortgage is executed is a "purchaser." *Assets Realization Co. v. Clark* (1912), 205 N. Y. 105, 120, 98 N. E. 457.

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A judgment creditor is not embraced in the word "purchaser." *Schmidt v. Hoyt* (1883), 1 Edw. Ch. 652.

"Conveyance" includes a grant by way of quitclaim, or of bargain and sale, a mortgage, an assignment or satisfaction of a mortgage, and a release of a part of the mortgaged premises. See *Wilhelm v. Wilkens* (1896), 149 N. Y. 447, 44 N. E. 82, 32 L. R. A. 370, affg. (1894), 75 Hun 552, 27 N. Y. Supp. 853; *Decker v. Boice* (1894), 83 N. Y. 215; *Smith v. Knickerbocker, L. Ins. Co.* (1881), 84 N. Y. 589; *Brewster v. Carnes* (1886), 103 N. Y. 556, 9 N. E. 323; *Ward v. Isbell* (1893), 73 Hun 550, 26 N. Y. Supp. 141; *Baker v. Thomas* (1891), 61 Hun 17, 15 N. Y. Supp. 359; *Larned v. Donovan* (1891), 84 Hun 533, 32 N. Y. Supp. 731, affd. (1898), 155 N. Y. 341, 49 N. E. 942; *Frear v. Sweet* (1890), 118 N. Y. 454, 463, 23 N. E. 910; *Gillig v. Maass* (1863), 28 N. Y. 191, 212; *Westbrook v. Gleason* (1879), 79 N. Y. 23; *Purdy v. Huntington* (1870), 42 N. Y. 334, 349; *Briggs v. Thompson* (1895), 86 Hun 607, 33 N. Y. Supp. 765; *Bradley v. Walker* (1893), 138 N. Y. 291, 83 N. E. 1079; *Bacon v. Van Schoonhoven* (1895), 87 N. Y. 446; *Morss v. Salisbury* (1872), 48 N. Y. 636, 644; *Viele v. Keeler* (1891), 129 N. Y. 190, 198, 29 N. E. 78.

An instrument in satisfaction of a mortgage is a conveyance within the protection of the recording act. *Assets Realization Co. v. Clark* (1912), 205 N. Y. 105, 119, 98 N. E. 457.

A release of a part of mortgaged premises is a "conveyance." *Baker v. Thomas* (1891), 61 Hun 17, 15 N. Y. Supp. 359.

A mortgage to secure future advances is a conveyance within the meaning of the recording act. *Reynolds v. Webster* (1893), 71 Hun 378, 24 N. Y. Supp. 1133.

Mortgages and assignments of mortgages are conveyances, within the meaning of the statute. *Gibson v. Thomas* (1905), 180 N. Y. 483, 73 N. E. 484, 70 L. R. A. 768. *Breed v. National Bank* (1901), 57 App. Div. 468, 68 N. Y. Supp. 68, affd. (1902), 171 N. Y. 648, 63 N. E. 1115.

A written assignment of a mortgage and a written instrument extending the time for the payment of the mortgage and reducing the rate of interest payable thereon, are both conveyances of real property within the meaning of the term as defined in this section. *Weideman v. Zielinska* (1905), 102 App. Div. 163, 92 N. Y. Supp. 493.

Instruments which affect the land and the title to the same only are entitled to record, and not such as relate to collateral matters. *Dunlop v. Avery* (1882), 89 N. Y. 592, 599. The recording act embraces every instrument in writing by which the title to real estate may be affected in law or equity. *McArthur v. Gordon* (1889), 51 Hun 511, 516, 4 N. Y. Supp. 584, mod. (1891), 126 N. Y. 597, 27 N. E. 475.

Easements capable of physical examination are embraced within the recording act and necessarily subject to the same law of notice as conveyances of a fee. *Ward v. Met. El. R. R. Co.* (1894), 82 Hun 545, 548, 31 N. Y. Supp. 527, affd. (1897), 152 N. Y. 39, 46 N. E. 319; *Snell v. Levitt* (1888), 110 N. Y. 595, 18 N. E. 370, 1 L. R. A. 414, revg. (1886), 39 Hun 227, 229.

Personal covenants are not within the recording act. Thus, the recording of a mortgage containing a covenant to keep buildings on the mortgaged premises insured is not constructive notice of the covenant to any subsequent incumbrancers. *Dunlop v. Avery* (1882), 89 N. Y. 592, 599. See also *Judson v. Dada* (1880), 79 N. Y. 373.

A sheriff's deed, duly recorded, is protected by and has the benefit of the recording act. *Hetzel v. Barber* (1877), 69 N. Y. 1; *Beman v. Douglas* (1896), 1 App. Div. 169, 171, 37 N. Y. Supp. 859. See also *Jackson ex dem. Lansing v. Chamberlain* (1832), 8 Wend. 620.

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Effect of recording contracts for sale of lands.—The only effect of the statutory provisions for the recording of the contracts for the sale of lands is to preserve evidence and facilitate proof thereof, and the record is not constructive notice to subsequent purchasers or incumbrancers, and no action can be maintained to cancel it as a cloud upon title. *Washburn v. Burnham* (1875), 63 N. Y. 132, 135; *Boyd v. Schlesinger* (1874), 59 N. Y. 301. Contracts for the sale or purchase of lands are not within the recording act. *Townsend v. Bissell* (1875), 4 Hun 297, 300.

Notice of an unrecorded title will be imputed only when it is a reasonable and just inference from visible facts. *Briggs v. Thompson* (1895), 86 Hun 607, 33 N. Y. Supp. 765.

§ 291. **Recording of conveyances.**—A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated, and such county clerk shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 241; L. 1896, ch. 572, § 2; originally revised from R. S., pt. 2, ch. 3, § 1.

Revisers' note.—Unchanged in substance. In *Raynor v. Wilson* (1844), 6 Hill 469, held: That the statute avoiding an unrecorded deed as against a purchaser in good faith, etc., applies only to successive purchasers from same grantor. The revisers refer to the above case as "*Payner v. Wilson* (1836), 15 Wend. 469," but the case in 6 Hill was evidently intended.

Legislative and judicial history of recording act considered. *Hatcher v. Brunt* (1915), 89 Misc. 530, 153 N. Y. Supp. 707.

Construction and application.—The recording acts are remedial statutes and must, therefore, be liberally and beneficially construed. *Fort v. Burch* (1849), 6 Barb. 60, 69. They are prospective and not retrospective in their operation, and are notice to subsequent purchasers but do not affect prior purchasers. *Transcott v. King* (1849), 6 Barb. 346, 349, revd. (1852), 6 N. Y. 147.

It is only when two conveyances purport to convey the same property that a subsequent purchaser obtains a priority over an earlier grantee by reason of priority of the record of his deed. *Treadwell v. Inslee* (1890), 120 N. Y. 458, 466, 24 N. E. 651.

There is some question whether the words "from the same vendor, his heirs or devisees" are in force. While chapter 547, Laws of 1896, enacted the section in full and repealed that portion of the Revised Statutes containing the section then substantially being reproduced, except that the quoted words were added, at the same session of the Legislature chapter 572 was passed, which amended the section of the Revised Statutes which had been repealed by the Real Property Law, and thereby, it seems, re-enacted it without the words quoted. *Assets Realization Co. v. Clark* (1912), 205 N. Y. 105, 119, 98 N. E. 457.

This section is permissive and protective and not mandatory.—It protects subsequent purchasers and mortgagees who purchase in good faith, pay a valuable consideration and first record. *Matter of Mosher* (1915), 224 Fed. 739.

An unrecorded deed is good as between the parties.—*Fryer v. Rockefeller* (1875), 63 N. Y. 268, 274; *Hershey v. Robeson* (1910), 121 N. Y. Supp. 167. But, although prior in date, it has no effect as against a subsequent deed first recorded, and the subsequent deed conveys the title as if the first deed had not been executed. *Page v. Waring* (1879), 76 N. Y. 463, 469. See also *Jackson ex dem. Merrick v. Post* (1836), 15 Wend. 588, 594.

Duty of grantees to record conveyances.—The statute does not impose upon grantees, the duty of recording their titles for the protection of subsequent purchasers or incumbrancers. *Trenton Banking Co. v. Duncan* (1881), 86 N. Y. 221, 231.

Execution and record without knowledge of grantee or mortgagee.—The rule that where the grantor or mortgagor executes and records a deed or mortgage, without the knowledge of the grantee or mortgagee, a subsequent acceptance by the grantee or mortgagee will give effect to the instrument from the time of its delivery to the recording officer, does not apply where the rights of third parties have intervened. *Wilcox v. Drought* (1902), 71 App. Div. 402, 75 N. Y. Supp. 960.

Sufficiency of record.—A record of a conveyance should be sufficient at least to put the purchaser upon inquiry. *Rourk v. Murphy* (1883), 12 Abb. N. C. 402, 405. The record of a mortgage, although it contains a recital of the deed, is not notice to a subsequent purchaser of the existence of the deed. *Todd v. Elghmie* (1896), 4 App. Div. 9, 12, 38 N. Y. Supp. 304.

The recording of a mortgage in a deed book is ineffectual as notice. *Howells v. Hettrick* (1897), 13 App. Div. 366, 43 N. Y. Supp. 183, *affd.* (1899), 160 N. Y. 308, 54 N. E. 677. And the defective registry of an agreement to postpone the lien of a prior mortgage, which is recorded in the book of deeds, instead of the book of mortgages, is not constructive notice to a subsequent bona fide assignee of such prior mortgage. *Gillig v. Maass* (1863), 28 N. Y. 191, 213.

It was formerly held that the record of a deed, to be effectual as evidence of a conveyance of a legal title to the land described, must in some manner represent that the instrument was sealed, otherwise the record simply represents a conveyance of the equitable title. *Todd v. Union Dime Savings Institution* (1890), 118 N. Y. 337, 23 N. E. 299.

The delivery of a deed or mortgage to a recording officer with intent that it shall become operative, although without the knowledge of the party to be benefited, constitutes a good delivery as between the parties, and an acceptance will be presumed unless the grantees or mortgagee repudiates the transaction when it comes to his knowledge. The rule is otherwise, however, where the grantor or mortgagor who causes the instrument to be recorded does not intend that it shall become operative. *Wilcox v. Drought* (1902), 71 App. Div. 402, 75 N. Y. Supp. 960.

It is not necessary to record an assignment of a recorded mortgage as against a subsequent purchaser of the mortgaged premises, but only as against a subsequent purchaser of the mortgage itself. Hence, one who purchases land from a mortgagee thereof, when the mortgage is on record, without making inquiry or requiring the production of the mortgage or of the note which it was given to secure, is not a bona fide purchaser as against a prior assignee of the mortgage, although the assignment was not recorded. *Curtis v. Moore* (1897), 152 N. Y. 159, 46 N. E. 168.

The assignee of a recorded mortgage upon real estate which was conveyed by the mortgagor to the mortgagee after an assignment of the mortgage, has a valid lien as against a purchaser of the land from the mortgagee who took without notice of the assignment, notwithstanding the conveyance to the mortgagee as well as the conveyance from the mortgagee to the purchaser were recorded before the assignment was placed on record. *Curtis v. Moore* (1897), 152 N. Y. 159, 46 N. E. 168.

Purchaser in good faith for valuable consideration.—The phrase “any subsequent purchaser in good faith and for a valuable consideration” is not peculiar to the recording act, but is of frequent occurrence in the statutes. It has been borrowed from the language of courts of equity, and should be interpreted in the sense in which it is there understood. *Ten Eyck v. Witbeck* (1892), 135 N. Y. 40, 48, 31 N. E. 994, revg. (1891), 39 N. Y. St. Rep. 634, 15 N. Y. Supp. 418; *Grimstone v. Carter* (1832), 3 Paige 421, 437; *Tuttle v. Jackson* (1830), 6 Wend. 213; *Dickerson v. Tillinghast* (1833), 4 Paige 215, 221.

The words “subsequent purchaser” mean a purchaser of the estate embraced in the unrecorded conveyance or of some interest therein. *Campbell v. Vedder* (1866), 1 Abb. Ct. App. Dec. 295, 302. A purchaser of property at a mortgage foreclosure sale is a subsequent purchaser in good faith; the rights of such a purchaser are superior to those of a plumber who had installed plumbing work in a building on the land sold, under an agreement that the material used should remain his property until fully paid for. *McMillan v. Leaman* (1905), 101 App. Div. 436, 91 N. Y. Supp. 1055.

One who acquires title to valuable property for a merely nominal money consideration, although actually paid, but under circumstances indicating a gift or advancement, is not within the meaning of this section “a purchaser for a valuable consideration”; and his deed, although recorded, conveys no title as against a prior unrecorded conveyance of the same property. The consideration must not only be good, but valuable, in the sense that a fair equivalent is given for the property granted, in order to constitute the grantee a purchaser for value. *Ten Eyck v. Witbeck* (1892), 135 N. Y. 40, 31 N. E. 994, revg. (1891), 39 N. Y. St. Rep. 634, 15 N. Y. Supp. 418.

A purchaser for a valuable consideration is one who has paid the consideration of the conveyance or some part thereof, or has parted with something of value upon the faith of the conveyance. *Westbrook v. Gleason* (1879), 79 N. Y. 23, 28. One who advances money on a mortgage, on the satisfaction of a previous mortgage on the same premises, stands in the position of a bona fide purchaser of the premises. *Bacon v. Van Schoonhoven* (1882), 87 N. Y. 446.

A party, who takes a mortgage as collateral security for a precedent debt past due, is not a purchaser in good faith and for a valuable consideration, unless by the mortgage or as the consideration thereof, it extended the time of payment of the antecedent debt, to secure which the mortgage was given. *Durkee v. Nat. Bank of Ft. Edward* (1885), 36 Hun 565.

A person who takes collateral security to secure a pre-existing debt is not a bona fide purchaser. *Breed v. National Bank* (1901), 57 App. Div. 468, 68 N. Y. Supp. 68, affd. (1902), 171 N. Y. 648, 63 N. E. 1115.

The party receiving a subsequent conveyance must have received the same upon some new consideration advanced at the time, or must have relinquished some security for the pre-existing debt due him. *Pickett v. Barron* (1859), 29 Barb. 505, 507.

The acknowledgement of the receipt of one dollar is sufficient to show the grantee to be a purchaser for a valuable consideration. *Hendy v. Smith* (1888), 49 Hun 510, 2 N. Y. Supp. 535.

See, generally, as to what constitutes purchaser in good faith, *Cary v. White* (1873), 52 N. Y. 138; *Ward v. Isbell* (1893), 73 Hun 550, 552, 26 N. Y. Supp. 141; *Beal v. Miller* (1874), 1 Hun 390, 396; *Reynolds v. Darling* (1864), 42 Barb. 418, 523; *Simon v. Kaliske* (1869), 37 How. Pr. 249, 260; *Hoyt v. Hoyt* (1861), 21 N. Y. Super. (8 Bosw.) 511, 523; *Baker v. Thomas* (1891), 61 Hun 17, 15 N. Y. Supp. 359; *Goettlicher v. Wille* (1912), 76 Misc. 361, 134 N. Y. Supp. 977, affd. (1913), 156 App. Div. 392, 141 N. Y. Supp. 1121; *Davies v. Jones* (1899), 29 Misc. 253, 61

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N. Y. Supp. 291; *Wilcox v. Drought* (1902), 71 App. Div. 402, 75 N. Y. Supp. 960; *Moore v. La Marie* (1915), 169 App. Div. 154, 157, 154 N. Y. Supp. 822.

An agreement to support one for life actually executed is a valuable consideration, which will sustain the right of a grantee to a deed taken without notice of a prior unrecorded deed. *Northrup v. Coon* (1912), 154 App. Div. 337, 138 N. Y. Supp. 1044.

The presumption of good faith arising from the payment of a valuable consideration by the grantor is sufficient until overcome by proof. *Wood v. Chapin* (1856), 13 N. Y. 509, 518; *Ward v. Isbell* (1893), 73 Hun 550, 26 N. Y. Supp. 141.

A judgment creditor is not a "subsequent purchaser in good faith" within the meaning of this section, and an unrecorded mortgage has a preference over a subsequent judgment unless there is a superior equity in favor of the holder of the latter. *Sullivan v. Corn Exchange Bank* (1912), 154 App. Div. 292, 139 N. Y. Supp. 97.

Trustees in bankruptcy are not subsequent purchasers in good faith and for value.—*Matter of Mosher* (1915), 224 Fed. 739.

Notice of unrecorded conveyance.—A recital in a recorded instrument as to another unrecorded conveyance is not notice under the recording acts of the unrecorded conveyance. *People's Trust Co. v. Tonkonogy* (1911), 144 App. Div. 333, 128 N. Y. Supp. 1055.

Actual notice of a prior unrecorded conveyance, or of any title, legal or equitable, to the premises, or knowledge and notice of any facts which would put a prudent man upon inquiry, impeaches the good faith of the subsequent purchaser. *Brown v. Volkening* (1876), 64 N. Y. 76, 82. Priority of registry is of no avail against a previous notice of an unregistered mortgage. *Berry v. Mut. Life Ins. Co.* (1817), 2 Johns. Ch. 603, 608.

Possession and occupation; when sufficient to constitute notice.—Such possession, under an unrecorded deed, as will amount to notice to a subsequent purchaser, must be under the unrecorded deed, and must be actual, open and visible, so that the subsequent grantee could go upon the lands, and there obtain, by inquiry, information of the unrecorded deed. *Page v. Waring* (1879), 76 N. Y. 463, 470. The possession and occupation must be actual, open and visible; it must not be equivocal, occasional, or for a special or temporary purpose; neither must it be consistent with the title of the apparent owner by record. *Brown v. Volkening* (1876), 64 N. Y. 76, 83.

Open possession of lessee under unrecorded lease for a term exceeding three years; constructive notice to subsequent incumbrancer; foreclosure of subsequent mortgage; writ of assistance to eject lessee.—A lease for a term exceeding three years is a conveyance and must be recorded as required by the Real Property Law in order to be valid as against subsequent purchases in good faith and for a valuable consideration. But where a tenant is in open, visible and continuous possession under a lease for a term exceeding three years, one taking a subsequent mortgage upon the premises is charged with constructive notice of the prior lease, although it is not recorded, and is not an incumbrancer in good faith within the meaning of the recording act. Hence, under such circumstances, although a judgment of foreclosure of the subsequent mortgage, which was recorded, has been entered on a summons and complaint in which no personal claim was made against the lessee which was named defendant, the purchaser on foreclosure, or its grantee, is not entitled to a writ of assistance to eject the lessee from the premises. Moreover, the rights of the lessee as against the subsequent mortgagee under its prior unrecorded lease will not be determined upon affidavits in a summary proceeding for a writ of assistance. *City Bank of Bayonne v. Hocks* (1915), 168 App. Div. 83, 153 N. Y. Supp. 731.

Constructive notice of prior unrecorded mortgage, discussed. *Kirchoff v. Gerli* (1916), 171 App. Div. 160, 156 N. Y. Supp. 770; *Baker v. Thomas* (1891), 61 Hun 17, 15 N. Y. Supp. 359.

Who entitled to protection of recording act.—To enable a subsequent purchaser to assail a prior unrecorded mortgage, it is incumbent upon him to show not only that he was a bona fide purchaser for value without notice, but that his conveyance was first recorded. *Westbrook v. Gleason* (1879), 79 N. Y. 23, 33. He must aver and prove that he paid the purchase money before notice. *Harris v. Norton* (1853), 16 Barb. 264, 267.

But a party need not show that all the intermediate conveyances forming his chain of title were recorded. *Wood v. Chapin* (1856), 13 N. Y. 509, 518.

The recording act is for the protection of purchasers by deed, mortgage, or by assignment of a mortgage, in good faith and for value, from unknown conveyances, rights and equities arising under them and connected with the title, but not for the protection of rights arising out of the consideration of the conveyances. *Larned v. Donovan* (1895), 84 Hun 533, 536, 32 N. Y. Supp. 731, *affd.* (1898), 155 N. Y. 341, 49 N. E. 942.

Effect of recording conveyance.—The recording of a conveyance of realty operates as notice to all subsequent bona fide purchasers for value of the same property. *Mueller v. Goerlitz* (1907), 53 Misc. 53, 103 N. Y. Supp. 1037; *Brown v. Johnston* (1879), 7 Abb. N. C. 188. The registration of incumbrances is notice to subsequent incumbrancers only. *Ackerman v. Hunsicker* (1881), 85 N. Y. 43, 50; *Stuyvesant v. Hone* (1844), 1 Sandf. Ch. 419, 425, *affd.* (1845), 2 Barb. Ch. 151.

The recording act does not impose upon a purchaser who knows of one adverse claim constructive notice of another of which he has no information or suspicion. *Todd v. Elghmie* (1896), 10 App. Div. 142, 41 N. Y. Supp. 1013. The recording acts were intended to charge with notice such persons only as have reason to apprehend some transfer or incumbrance prior to their own. *Hooker v. Pierce* (1842), 2 Hill 650, 653.

Scope and effect of recording act, see *Irving v. Campbell* (1890), 121 N. Y. 353, 359, 24 N. E. 821, 8 L. R. A. 620; *LaFarg Fire Ins. Co. v. Bell* (1856), 22 Barb. 54, 65.

Forged instrument not strengthened by recording.—Recording adds nothing to the legal efficacy of a false and fabricated, and therefore forged, writing, such as a deed, the signature to which, although genuine, was procured by trick or artifice, and bearing a false certificate of acknowledgment, having a notary's genuine signature, but also obtained by trick or artifice. The recording act never was intended to be a protection to innocent purchasers or mortgagees against theft, forgery, fraud or duress. *Marden v. Dorthy* (1899), 160 N. Y. 39, 54 N. E. 726, 46 L. R. A. 694.

A purchaser of lands across which a private road passes is not protected by the above section against the assertion of an easement obtained by the adverse use of such road, where it appears that at the time of the purchase the road was physically defined and apparent. *Hey v. Collman* (1903), 78 App. Div. 584, 79 N. Y. Supp. 778, *affd.* (1905), 180 N. Y. 560, 73 N. E. 1125.

Priority of mortgages.—Where a bank, which had discounted an order for the payment of money, surrenders such order to the payee and endorser thereof, in return for a promissory note and real estate mortgage executed by such payee and endorser, the bank becomes a bona fide holder of the mortgage for value under the recording act, and the lien of such mortgage is superior to the lien of a prior mortgage executed by the mortgagor and which was not known to the bank and was not recorded until after the recording of the mortgage given to the bank. *Douglas v. Miller* (1905), 102 App. Div. 94, 92 N. Y. Supp. 514.

A mortgage duly recorded is notice of its terms and conditions, as well as of those of the accompanying bond, which was a part of it. *Universal Trust Co. v. Boehanski* (1912), 75 Misc. 317, 320, 135 N. Y. Supp. 100.

Two mortgages, executed at the same time, are not within the statute, for neither one, although first recorded, is a subsequent conveyance. *Greene v. Warnick* (1876), 64 N. Y. 220, 226; *Rhoades v. Canfield* (1841), 8 Paige 545, 546.

The lien of a prior unregistered mortgage is superior to that of a subsequent unrecorded deed. *Ely v. Scofield* (1861), 35 Barb. 330, 334.

A creditor who gives a valid extension of a time of payment of a pre-existing debt, and takes a mortgage as security for the same, is a bona fide purchaser, for a valuable consideration, and the mortgage takes priority over a previous unrecorded mortgage. *O'Brien v. Fleckenstein* (1915), 180 N. Y. 350, 73 N. E. 30, affg. (1903), 86 App. Div. 140, 83 N. Y. Supp. 499.

The fact that a subsequent mortgagee, after the execution and delivery of his mortgage, and after he had parted with the consideration therefor, but before it was recorded, had notice of the prior mortgage, does not affect the priority of his lien. *Constant v. Univ. of Rochester* (1892), 133 N. Y. 640, 31 N. E. 26.

Priority as between two mortgages held to secure same debt. *Squire v. Greene* (1898), 32 App. Div. 258, 52 N. Y. Supp. 1013.

Where in a suit to foreclose a mortgage a defendant, holding another mortgage which antedates the plaintiff's mortgage but was not recorded until after that of the plaintiff, claims priority on the theory that the plaintiff had knowledge of the prior incumbrance and so is not entitled to the benefit of the recording act, she is under the burden of affirmatively establishing said plea. *Kirchhoff v. Gerli* (1916), 171 App. Div. 160, 156 N. Y. Supp. 770.

The rule seems to be that a bona fide purchaser of a mortgage for value without notice of a junior mortgage, who records his assignment, is entitled to priority over a prior unrecorded mortgage of which his assignor had full knowledge. *Gray v. Delpho* (1916), 97 Misc. 37, 162 N. Y. Supp. 194.

A mortgage which never became operative in the hands of the mortgagee, because he paid nothing for it and because it had never been delivered, is effective as against subsequent lienors in the hands of a bona fide purchaser for full value to whom the mortgagee, with the authority of the mortgagor, assigns it. The record of such mortgage is notice to a subsequent mortgagee, although the assignment of the mortgage is not recorded. *Spicer v. First National Bank of Fort Edward* (1900), 55 App. Div. 172, 66 N. Y. Supp. 902, affd. (1902), 170 N. Y. 562, 62 N. E. 1100.

An assignment of a mortgage with a representation that it is a first lien binds the assignor who subsequently requires an earlier mortgage. *Squire v. Greene* (1898), 32 App. Div. 258, 52 N. Y. Supp. 1013.

Where the owner of a farm, some years after the execution of a mortgage thereon, conveyed a strip of land through the farm to a railroad company, which had the deed recorded, entered into possession of the land and ever since has maintained and operated a railroad thereon, and, about the same time, the owner of the mortgage, holding it by mesne assignments from the mortgagee, all of which had been recorded, executed to the mortgagor a release of the land conveyed to the railroad company, which was delivered to the company, but not recorded by it, a subsequent purchaser of the mortgage for full value, holding it under a recorded assignment, and who, at the time of the purchase of the mortgage, had no knowledge of the existence of the release, had not seen the farm and did not know that the railroad ran through it, is protected under the recording act in his lien upon the entire premises, unaffected by the release. *Gibson v. Thomas* (1905), 180 N. Y. 483, 73 N. E. 484, 770 L. R. A. 768.

Where an attorney at law, being the real mortgagee in interest, had the mortgage executed to this clerk and thereafter assigned the genuine bond together with a forged mortgage, the genuine mortgage passed under the assignment. Hence, a subsequent assignment of the genuine mortgage as collateral to a forged bond to another person passed no title, the assignor having none to pass. The first assignment having been recorded before the second assignment, the title of the first assignee is protected by the statute. *Goettlicher v. Wille* (1913), 156 App. Div. 392, 141 N. Y. Supp. 1121.

Mortgage to secure future advances.—A party who takes a mortgage to secure future advances, upon recording the same, is protected for advances made upon the faith and within the limits of the security, against intervening liens, until he has notice thereof, and the recording of a subsequent lien is not constructive notice thereof to him. *Reynolds v. Webster* (1893), 71 Hun 378, 24 N. Y. Supp. 1133.

A mortgage placed on recorded title is invalid as against a subsequent grantee of the lands who had no knowledge of facts sufficient to put him upon inquiry as to the prior unrecorded deed. *Trombly v. Turner* (1906), 116 App. Div. 74, 101 N. Y. Supp. 27, *affd.* (1908), 193 N. Y. 624, 86 N. E. 1134.

Confession of judgment and mortgage; when equal liens.—Where, on the same day that one acknowledged and delivered a confession of judgment, he acknowledged and delivered to another creditor a mortgage upon his real estate, both the mortgage and the confession of judgment, in the absence of intention to give a preference, will be declared equal liens, though the mortgage was not recorded until after the confession of judgment was docketed. *Adirondack Hardware Co. v. Walsh* (1911), 74 Misc. 594, 134 N. Y. Supp. 562.

§ 292. By whom conveyance must be acknowledged or proved.—Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 242; originally revised from R. S., pt. 2, ch. 3, § 4.

Purpose and effect of acknowledgment and proof.—The acknowledgment and proof of deeds are merely for the purpose of recording them, and are not conclusive on the opposite party. *Jackson ex dem. Hardenberg v. Schoonmaker* (1809), 4 Johns. 161, 162.

Taking acknowledgment is not a judicial act, and a justice of the peace is not disqualified by reason of his relationship to the parties. *Lynch v. Livingston* (1852), 6 N. Y. 422; *Remington Paper Co. v. O'Dougherty* (1880), 81 N. Y. 474, 483.

Acknowledgment by the grantor before the grantee is a nullity.—*Armstrong v. Combs* (1897), 15 App. Div. 246, 248, 44 N. Y. Supp. 171.

Acknowledgment by attorney or agent.—Where a deed is executed by the attorney of the grantor, lawfully authorized, he is the party executing the same, who may make the acknowledgment. So, the officer or agent of a corporation, who executes a deed in the name of the corporation, may make the acknowledgment. *Lovett v. Steam Saw Mill Assn.* (1836), 6 Paige 54, 60.

Proof by evidence of handwriting of deceased witness.—A deed may be proved by evidence of the handwriting of a deceased subscribing witness, though there be indorsed thereon, a certificate of acknowledgment, made before such witness, as a commissioner, which is duly authenticated. *Borst v. Emple* (1851), 5 N. Y. 33.

Effect of discrepancy between date of deed and signature.—A discrepancy of one day between the date of a deed and the date under the signature of the sub-

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scribing witness, does not justify the rejection of the title. *Bowers v. Duryea* (1908), 58 Misc. 525, 109 N. Y. Supp. 756.

§ 293. Recording of conveyances heretofore acknowledged or proved.—A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but which has not been recorded, is entitled to be read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed. If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 243; originally revised from R. S., pt. 2, ch. 3, §§ 22, 23.

References.—Evidence of conveyances, see Code of Civil Procedure, §§ 935, 936.

See *Dempsey v. Tylee* (1854), 10 N. Y. Super. (3 Duer), 73, 95.

§ 294. Recording executory contracts and powers of attorney.—An executory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 244; originally revised from R. S., pt. 2, ch. 3, § 39, in part.

Effect of recording contracts for sale of lands.—It seems that the only effect of the provision for the recording of contracts for the sale of lands is to preserve the evidence and facilitate proof thereof. The record is not constructive notice to subsequent purchasers or incumbrancers, and an action cannot be maintained to cancel it as a cloud upon the title. *Boyd v. Schlesinger* (1874), 59 N. Y. 301; *Washburn v. Burham* (1875), 63 N. Y. 132.

A power of attorney in order to be recorded must be acknowledged as required by law. *Paolillo v. Faber* (1900), 56 App. Div. 241, 67 N. Y. Supp. 638.

Transcript of power of attorney as evidence.—A transcript, certified by the proper officer, of a power of attorney authorizing the conveyance of land, recorded in the clerk's office of the county in which the land is situated, is competent as evidence. *Lerche v. Brasher* (1887), 104 N. Y. 157, 10 N. E. 58.

§ 295. Recording of letters patent.—Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 245; originally revised from L. 1845, ch. 110.

Application.—Grants from the sovereign to be valid must be recorded. *Hooper v. City of New York* (1916), 96 Misc. 47, 160 N. Y. Supp. 14.

Evidence; certified copy of record of letters patent.—A grant from the People of the State of New York by letters patent may be proved, where the original letters patent are lost, by a certified copy of the record of such letters in the office of

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the Secretary of State. Such a copy is a transcript from a record kept "pursuant to law," within the meaning of section 933 of the Code of Civil Procedure. *New York Central & H. R. R. Co. v. Brockway Brick Co.* (1896), 10 App. Div. 387, 41 N. Y. Supp. 762, *affd.* (1899), 158 N. Y. 470, 53 N. E. 209.

§ 296. Recording copies of instruments which are in secretary of state's office.—A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate in the office of any recording officer of the state.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 246; originally revised from L. 1839, ch. 295, § 5.

§ 297. Certified copies may be recorded.—A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section three hundred and ten of this chapter were so recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 247; originally revised from L. 1843, ch. 210, § 5, as amended by L. 1893, ch. 182; L. 1887, ch. 539.

§ 298. Acknowledgments and proofs within the state.—The acknowledgment or proof of a conveyance of real property within the state may be made at any place within the state, before a justice of the supreme court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds, except that such an acknowledgment or proof of conveyance may be taken by a justice of the peace anywhere within the county containing the town or city in which he is authorized to perform official duties. (*Amended by L. 1915, ch. 190.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 248; originally revised from R. S., pt. 2, ch. 3, § 4, subd. 1.

Consolidators' note.—It is highly desirable that a statutory form for a certificate of acknowledgment, by attorneys in fact, should be prescribed, inasmuch as there is considerable difference of opinion in the profession as to the requisites of such certificate. The officer taking such acknowledgment cannot be expected to have any knowledge of the principal in the transaction. He commonly knows only the attorney in fact and need not know the principal. Hence it should be sufficient that he certify the identity of the person making the acknowledgment as attorney in fact. As the attorney is not necessarily described in the instrument of conveyance acknowledged, both the power of attorney and the certificate

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of acknowledgment should be required to be precise in their descriptions of the attorney so as to distinguish him from persons bearing similar names.

The following form is suggested to go as a new section at the end of this article:

"§ 332. ATTORNEYS IN FACT AND FORM OF ACKNOWLEDGMENT. Every instrument hereafter executed conferring a power upon any person, as agent or attorney in fact for another, to convey or mortgage real property in this state, or to assign, release or satisfy any lien thereon, shall describe such agent or attorney in fact, stating his occupation, if any, and also his residence or place of business.

The certificate of acknowledgment of an instrument executed by such agent or attorney in fact shall be substantially in the following form, the blanks being properly filled:

State of }
County of } ss:

On this day in the year, before me personally came to me personally known to be the person described and appointed attorney in fact and in by a certain power of attorney executed by bearing date the day of and recorded in the office of the register (or clerk) of the County of on the day of (or to be recorded in the office of the of the County of simultaneously with the within instrument) and acknowledged to me that he had executed the within (or foregoing) instrument as the act of the said

Signature and office of officer
taking the acknowledgment."

A police magistrate of the city of New York is not a judge authorized to take acknowledgment *Tully v. Lewitz* (1906), 50 Misc. 350, 98 N. Y. Supp. 829.

§ 299. Acknowledgments and proofs in other states.—The acknowledgment or proof of a conveyance of real property, within the state, may be made without the state, but within the United States, before any of the following officers acting within his jurisdiction, or of the court to which he belongs:

1. A judge of the supreme court, of the circuit court of appeals, of the circuit court, or of the district court of the United States.
2. A judge of the supreme, superior, or circuit court of a state.
3. A mayor of a city.
4. A commissioner appointed for the purpose by the governor of the state.
5. Any officer of the state or territory in which the acknowledgment is taken authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.
6. Any officer of the District of Columbia authorized by the laws of the United States to take the acknowledgment or proof of deeds to be recorded in said district.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 249, as amended by L. 1903, ch. 419; L. 1908, ch. 61; originally revised from R. S., pt. 2, ch. 3, § 4, subd. 2; L. 1829, ch. 222, § 1, in part; L. 1845, ch. 109; L. 1848, ch. 195, § 1, as amended by L. 1892, ch. 208, and L. 1893, ch. 123.

Proof of instrument executed in a foreign state.—See *Goddard v. Schmoll* (1898), 24

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Misc. 381, 53 N. Y. Supp. 402. A certificate of acknowledgment taken before a notary of another state cannot be read in evidence here. *Johnston v. Granger* (1896), 17 Misc. 54, 39 N. Y. Supp. 848. So, an affidavit taken before a notary of another state cannot be read in evidence here. *Turtle v. Turtle* (1898), 31 App. Div. 49, 52 N. Y. Supp. 857. But if such an affidavit be authenticated as required by § 311, post, it may be used upon a motion in the courts of this state. *Isman v. Wayburn* (1907), 54 Misc. 86, 104 N. Y. Supp. 491; *Levy v. Levy* (1899), 29 Misc. 374, 60 N. Y. Supp. 485.

A deed of assignment executed in another state is inadmissible in evidence where the certificate of acknowledgment fails to state that the officer taking it was authorized by law to do so, or that he knew or had satisfactory evidence that the person making the acknowledgment was the individual described in and who executed the instrument. *Johnston v. Granger* (1896), 17 Misc. 54, 39 N. Y. Supp. 848.

§ 300. Acknowledgments and proofs in Porto Rico, the Philippines, Cuba, and elsewhere.—If the party or parties executing such conveyance shall be or reside in Porto Rico, the Philippine islands, Cuba, or in any other place over which the United States of America at the time has or exercises sovereignty, control, or a protectorate, the same may be acknowledged or proved before:

1. A judge or clerk of a court of record thereof, acting within his jurisdiction;
2. A mayor or other chief officer of a city, acting in such city;
3. A commissioner appointed for the purpose by the governor of this state and acting within his jurisdiction;
4. An officer of the United States regular army or volunteer service of the rank of captain or higher, or an officer of the United States navy of the rank of lieutenant or higher, while on duty at the place where such party or parties are or reside.

The certificate of an acknowledgment taken before any of the officers mentioned in subdivision one, two or three of this section, shall have attached thereto the seal of the court or officer if he have a seal, and if such officer have no seal, then a statement to that effect. The certificate of an acknowledgment taken before an officer of the army or navy mentioned in subdivision four of this section, shall state his rank, the name of the city, or other political division where taken, and the fact that he is on duty there, and shall be authenticated by the secretary of war or the secretary of the navy, as the case may be, of the United States.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 249-a, as added by L. 1901, ch. 84, amended by L. 1906, ch. 398.

§ 301. Acknowledgments and proofs in foreign countries.—The acknowledgment, or proof, of a conveyance of real property situated within this state, may be made without the United States before any of the following officers:

1. An ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, or a chargé d'affaires of the United States, accredited to the country, in which the acknowledgment or proof is taken, and residing therein.

2. A consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States, if residing within the country to which he is appointed, or a secretary of legation at the post, port, place or within the limits of his legation.

3. A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.

4. A person specially authorized for that purpose by a commission, under the seal of the supreme court of this state, issued to a reputable person residing in, or going to, the country where the acknowledgment or proof is to be taken.

5. If within the Dominion of Canada, it may also be made before any judge of a court of record; or before any officer of a province or territory of such Dominion authorized by the laws of such province or Dominion to take the acknowledgment or proof of deeds to be recorded therein.

6. If within the United Kingdom of Great Britain and Ireland or the dominions thereunto belonging, it may also be made before the mayor, the provost or other chief magistrate of a city or town therein, under his hand and the seal of such city or town.

7. All acts of ambassadors, ministers, plenipotentiary, ministers extraordinary, ministers resident, *chargés d'affaires* and secretaries of legation, in taking the acknowledgment or proof of a conveyance of real property situated within this state, performed before April twenty-ninth, nineteen hundred and four, are hereby confirmed, provided that the certificate of acknowledgment or proof is in the form required by the laws of this state.

8. If within the states comprising the empire of Germany or within the kingdom of Italy, it may also be made before a judge of a court of record under the seal of such court, or before a notary public under the seal of his office and the seal of the city or town in which the notary resides. (*Subd. 8, amended by L. 1915, ch. 28.*)

9. If within the empire of Austria, kingdom of Hungary and kingdoms, states, territories and provinces comprising the monarchy of Austria-Hungary, it may also be made before a judge or clerk of a court of record under the seal of such court or before an imperial royal notary or royal notary under the seal of his offices and the seal of the city or town in which such notary resides. (*Subd. 9, added by L. 1912, ch. 70.*)

10. If within the kingdom of Norway, Sweden or Denmark or if within any of their kingdoms, states, colonies, dependencies, territories, provinces, political subdivisions or dominions thereunto belonging, including Greenland and Iceland, it may be made before a judge or a clerk of a court of record therein under his hand and the seal of such court, or before the mayor or other chief magistrate of a city or town therein under his hand and the seal of such city or town, or before a notary public therein under

his hand and the seal of his office and the seal of the city or town in which the notary resides, or before a sheriff therein, under his hand and the seal of the city or town in which the sheriff resides, or before a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent or a vice-commercial agent, of either Norway, Sweden or Denmark accredited to the place in which the acknowledgment or proof is taken, and residing therein if under the hand and seal of his office or the seal of the consulate or legation to which he is attached. (*Subd. 10, added by L. 1916, ch. 395.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 250, as amended by L. 1901, ch. 611; L. 1903, ch. 98; L. 1904, chs. 528, 690; L. 1908, ch. 61; originally revised from R. S., pt. 2, ch. 3, §§ 5, 6, as amended by L. 1883, ch. 80, and §§ 7, 8; L. 1829, ch. 222; L. 1863, ch. 246, as amended by L. 1888, ch. 246; L. 1870, ch. 208; L. 1848, ch. 195, as amended by L. 1893, ch. 123.

Consolidators' note.—This section of the old Real Property Law is left in the language in which the various amendments to L. 1896, ch. 547, have put it, except that the indefinite article has been placed before the titles of the various functionaries mentioned, so as to make plain who is intended. In subsds. 1 and 2, the language is made less obscure by the proposed amendments. The acts amending this section and now embodied in it were not always precisely framed.

A power of attorney may be acknowledged before a vice-consul of the United States. *Brown v. Landon* (1883), 30 Hun 57, *affd.* (1885), 98 N. Y. 634. See also *Ross v. Wigg* (1884), 34 Hun 192, 203.

Acknowledgment in Switzerland.—An acknowledgment, the venue of which is as follows:

"Confederation of Switzerland,"	}	ss."
"Canton de Vaud,		
"City of Vevey,		

and which recites, "on this 28th day of May * * * before me, William Cuénod, Consular Agent of the United States of America, in and for the said City of Vevey, at said City of Vevey, personally appeared," sufficiently shows that the consular agent who took the acknowledgment resided in Switzerland. *Jordan v. Underhill* (1904), 91 App. Div. 124, 86 N. Y. Supp. 620.

Acknowledgment in Germany.—Subdivision 8 is not complied with where no "seal of the city or town in which the notary resides" appears upon the document. *Matter of Kroog* (1915), 89 Misc. 35, 152 N. Y. Supp. 553.

§ 302. Acknowledgments and proofs by married women.—The acknowledgment or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 251; originally revised from L. 1879, ch. 249, as amended by L. 1880, ch. 300, superseding R. S., pt. 2, ch. 3, § 10.

Effect of section.—This section abolished the rule requiring a private examination of a married woman upon her acknowledgment of a written instrument. *Wronkow v. Oakley* (1892), 64 Hun 217, 19 N. Y. Supp. 51, *revd.* (1892), 133 N. Y. 505, 31 N. E. 521, 16 L. R. A. 209. As to the former rule, see *Delafield v. Brady* (1888), 108 N. Y. 524, 15 N. E. 428; *Bradley v. Walker* (1893), 138 N. Y. 291, 33 N. E. 1079; *Albany Fire Ins. Co. v. Bay* (1850), 4 N. Y. 9, 12.

A deed executed by a married woman in 1858 is valid, notwithstanding the fact

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that the acknowledgment or proof of execution makes no reference to the fact that the grantor was a married woman. *Hulse v. Bacon* (1899), 40 App. Div. 89, 57 N. Y. Supp. 537, *affd.* (1901), 167 N. Y. 599, 60 N. E. 1113.

§ 303. **Requisites of acknowledgments.**—An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 252; originally revised from R. S., pt. 2, ch. 3, § 9.

Form and sufficiency of acknowledgment.—A certificate of proof or acknowledgment need not be in the precise language of the statute, but is to be liberally construed, and is enough if it shows a substantial compliance with the statute. *Canandaigua Academy v. McKechnie* (1879), 19 Hun 62, 68; *Smith v. Boyd* (1886), 101 N. Y. 472, 5 N. E. 319. See also *Fryer v. Rockefeller* (1875), 63 N. Y. 268.

The omission of the letters "ss" from the venue in an affidavit sworn to before a commissioner of deeds, does not invalidate the oath or render the affidavit a nullity. *Babcock v. Kuntzsch* (1895), 85 Hun 33, 32 N. Y. Supp. 587.

Knowledge of officers; sufficiency of statement.—An acknowledgment which does not state that the officer taking it knew or had satisfactory evidence that the person making such acknowledgment was the individual described in and who executed the conveyance is defective. *Moran v. Stader* (1907), 52 Misc. 385, 103 N. Y. Supp. 175. See also *Veit v. Schwob* (1908), 127 App. Div. 171, 173, 111 N. Y. Supp. 286. But such defect may be cured by the testimony of the notary that he knew the grantors personally, knew them to be the parties described, and that they properly acknowledged the deed. *Hutton v. Webber* (1892), 17 N. Y. Supp. 463.

Certificate of acknowledgment of deed must state that the person making it was known to be the same person described in and who executed it. *Carolan v. Yoran* (1905), 104 App. Div. 488, 93 N. Y. Supp. 935; *affd.* (1906), 186 N. Y. 575, 79 N. E. 1102.

A certificate of acknowledgment which states that at a specified time and place "before me personally appeared" certain persons named, "to me known and known by me, to be the parties executing the foregoing instrument and acknowledged that said instrument by them executed to be their free act and deed," is defective in that it fails to state as required by the statute that the parties appearing were the persons described in and who executed the instrument. This is true although the persons named in the acknowledgment bear the same names as the persons named in the body of the instrument. *Gross v. Rowley* (1911), 147 App. Div. 529, 132 N. Y. Supp. 541.

A commissioner of deeds when taking the acknowledgment to an agreement restricting the use of lands made by the agent of the owner, or that the power of attorney was exhibited and known to him. He need only certify that the person executing the agreement was known to him to be the person described in and who executed the instrument. *Goodhue v. Cameron* (1911), 142 App. Div. 470, 127 N. Y. Supp. 120.

A certificate of acknowledgment taken without the State of New York to a power of attorney, in which certificate the notary certifies that on a certain day, "personally appeared before me the within named James Monroe Cruser, to me known and acknowledged the above letter of attorney to be his act and deed," is insufficient to entitle the power of attorney to be recorded in the State of New York, in that it does not state that the notary knew the person who so appeared

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before him to be the person described in and who executed the power of attorney. *Freedman v. Oppenheim* (1903), 80 App. Div. 487, 81 N. Y. Supp. 110.

Mandamus.—A notary public may be compelled to certify that he knew the person signing the instrument acknowledged. *People ex rel. Sayville Co. v. Kempner* (1900), 49 App. Div. 121, 63 N. Y. Supp. 199.

§ 304. Proof by subscribing witness.—When the execution of a conveyance is proved by a subscribing witness, such witness must state his own place of residence, and that he knew the person described in and who executed the conveyance. The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 253; originally revised from R. S., pt. 2, ch. 3, § 12.

Application.—Section must be substantially complied with. See *Irving v. Campbell* (1890), 121 N. Y. 353, 360, 24 N. E. 821, 8 L. R. A. 620; *Trustees Canandarqua Academy v. McKechnie* (1882), 90 N. Y. 618. Where a deed of land has been duly acknowledged, it is not necessary, for the purpose of proving its execution, to call the subscribing witness. *Simmons v. Havens* (1886), 101 N. Y. 427, 433, 5 N. E. 73.

A notary who took an acknowledgment outside his own county, cannot be deemed a subscribing witness. *Mut. Life Ins. Co. v. Corey* (1889), 54 Hun 493, 498, 7 N. Y. Supp. 939, revd. (1892); 135 N. Y. 326, 31 N. E. 1095.

A certificate of the proof of the execution of a deed by a subscribing witness, which states that the witness resides in the city of Bergen, without naming the State, is not, for that reason, invalid, where it appears by the deed itself that the grantor lived in the State of New Jersey, though, at the time the proof was made, the former city of Bergen in that State had been consolidated with Jersey City. *Heaton v. Griswold* (1911), 70 Misc. 326, 128 N. Y. Supp. 749.

§ 305. Compelling witnesses to testify.—On the application of a grantee in a conveyance, his heir or personal representative, or a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such conveyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpoena, requiring such witness to attend and testify before him concerning the execution of the conveyance. A person who, on being duly served with such a subpoena, without reasonable cause refuses or neglects to attend or refuses to answer under oath concerning the execution of such conveyance, forfeits to the person injured one hundred dollars; and may also be committed to prison by the officer who issued the subpoena, there to remain without bail, and without the liberties of the jail, until he answers under oath as required by this section.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 254; originally revised from R. S., pt. 2, ch. 3, §§ 13, 14.

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See *Tuttle v. People* (1867), 36 N. Y. 431, 435.

§ 306. **Certificate of acknowledgment or proof.**—An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known, or proved on the taking of such acknowledgment or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

Any conveyance which has heretofore been recorded, or which may hereafter be recorded, shall be deemed to have been duly acknowledged or proved and properly authenticated, when thirty years have elapsed since such recording; saving, however, the rights of every purchaser in good faith and for a valuable consideration deriving title from the same vendor or grantor, his heirs or devisees, to the same property or any portion thereof, whose conveyance shall have been duly recorded before the said period of thirty years shall have elapsed or before September first, nineteen hundred and five.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 255, as amended by L. 1905, ch. 450; originally revised from R. S., pt. 2, ch. 3, § 15.

When instrument "duly acknowledged."—An instrument is not "duly acknowledged" unless there is not only the oral acknowledgment, but the written certificate also, as required by the statutes regulating the subject. *Rogers v. Pell* (1898), 154 N. Y. 518, 529, 49 N. E. 75, revg. (1895), 89 Hun 159, 35 N. Y. Supp. 17.

Certificate of acknowledgment of a lease by a corporation is not in compliance with the statute, where it fails to show who signed the lease, his residence or connection with the corporation, or that he had the authority of the board of directors to sign the lease. *Smith v. Guarantee Dental Co.* (1909), 114 N. Y. Supp. 867.

Certificate as to personal acquaintance.—An introduction at the time of the execution of an acknowledgment is insufficient to justify the notary in certifying to personal acquaintance. Personal acquaintance does not mean an acquaintance acquired upon the instant. *Bidwell v. Sullivan* (1897), 17 App. Div. 629, 45 N. Y. Supp. 530.

See, generally, *Irving v. Campbell* (1890), 121 N. Y. 353, 24 N. E. 821, 8 L. R. A. 620; *Thorn v. Mayer* (1895), 12 Misc. 487, 33 N. Y. Supp. 664; *Fryer v. Rockefeller* (1875), 63 N. Y. 268.

§ 307. **When certificate to state time and place.**—When the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the town and county or the city in which the same was taken.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 256; originally revised from L. 1850, ch. 270, § 5, as amended by L. 1880, ch. 115.

§ 308. **When certificate must be under seal.**—When a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without

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the United States, or by an ambassador, a minister, a chargé d'affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul or a deputy-consul, a consular or a vice-consular agent, a commercial or a vice-commercial agent, or a secretary of legation, of the United States, it must be under his seal of office, or the seal of the consulate or legation to which he is attached.

All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificates of which were made in the form required by the laws of this state, by a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent, a vice-commercial agent, or a secretary of legation of the United States prior to April twenty-ninth, nineteen hundred and four, are confirmed, but nothing herein contained shall affect any action or proceeding now pending in any court.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 257, as amended by L. 1904, ch. 528; originally revised from R. S., pt. 2, ch. 3, § 7; L. 1863, ch. 246, § 1, as amended by L. 1888, ch. 246, and § 2, as amended by L. 1865, ch. 421; L. 1875, ch. 136.

Consolidators' note—The changes simply conform to the correct official designations at Washington.

§ 309. Acknowledgment by corporation and form of certificate.—The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

State of New York, }
County of, } ss.:

On the day of in the year, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides in; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 258.

Statutory form of certificate; sufficiency.—See *Rogers v. Pell* (1900), 47 App. Div. 240, 244, 62 N. Y. Supp. 92, *affd.* (1901), 168 N. Y. 537, 60 N. E. 1112. No particular form prescribed by statute before 1896. *Pruyne v. Adams Furniture & Mfg. Co.* (1895), 92 Hun 214, 36 N. Y. Supp. 361, *affd.* (1898), 155 N. Y. 629, 49 N. E. 1103, *Canandaigua Academy v. McKechnie* (1879), 19 Hun 62.

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§ 310. **When county clerk's authentication necessary.**—A certificate of acknowledgment or proof, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer making the same is authorized to act at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county; provided, however, that all certificates of acknowledgments or proof, made by or before a commissioner of deeds of the city of New York residing in any part therein, shall be authenticated by the clerk of any county within said city, in whose office such commissioner of deeds shall have filed a certificate under the hand and seal of the city clerk of said city, showing the appointment and term of office of such commissioner, and no other certificate shall be required, from any other officer to entitle said conveyance to be read in evidence or recorded in any county of the state of New York. But this section does not apply to a conveyance executed by an agent for the Holland Land Company or of the Pulteney estate, lawfully authorized to convey real property. (*Amended by L. 1911, ch. 196.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 259, as amended by L. 1899, ch. 147; originally revised from R. S., pt. 2, ch. 3, §§ 18, 19.

§ 311. **When other authentication necessary.**—In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by certificates by the following officers, respectively:

1. Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the governor, by the secretary of state.

2. Where made by a judge of a court of record in Canada, by the clerk of the court.

3. Where made by the officer of a state of the United States, or of any province or territory of the Dominion of Canada, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, the provincial secretary, deputy provincial secretary or assistant provincial secretary of the province, or commissioner of the territory of the Dominion of Canada, or by the clerk, register, recorder or prothonotary of a county, city or parish in which the certificate purports to be made, or by the clerk of any court in or of such state or dominion, county, city or parish having by law a seal. The word county shall be deemed to apply to and include the District of Columbia for the purpose of this section. All certificates authenticating such acknowledgments or proofs of deeds, mortgages or other instruments relating to real property heretofore made by any of the officers above referred to are confirmed, saving, however, the rights of purchasers in good faith and for a valuable consideration whose conveyance shall have been duly recorded before this act shall take effect; this act shall not affect any action or legal proceeding now pending.

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4. All acts of the secretary of state of any state or territory of the United States in authenticating a certificate of acknowledgment or proof of a conveyance of real property within the state, performed before October first, eighteen hundred and ninety-six, are hereby confirmed, provided that the said certificate of authentication is in the form required by the laws of this state. (*Section amended by L. 1913, ch. 209.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 260, as amended by L. 1907, ch. 633, and L. 1908, ch. 136 subd. 4 added by L. 1905 ch. 329; originally revised from L. 1850, ch. 270, § 4; L. 1870, ch. 208; L. 1875, ch. 136, § 2; L. 1848, ch. 195, § 2, as amended by L. 1894, ch. 729.

Consolidators' note.—The requirements of authentication "by the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resides," is very troublesome. In some cases, a notary is a state officer. In Massachusetts, for example, a notary is qualified to act in any part of the state. Many, who have their offices in the county of Suffolk (city of Boston), reside in the suburbs in adjoining counties, but they always procure certificates from the Suffolk county clerk. Under this section as it stands, these certificates are not good. Even in cases where the notary resides in Suffolk, the certificate usually does not state that fact and inquiry is necessary.

This section should not be re-enacted without some slight change, curing its obvious defects.

The authentication should be sufficient if made by an officer of the county in which the *certificate purports to be made*.

Again, as the law now stands there is no provision for an authentication of an acknowledgment by a notary in the District of Columbia. Under § 47, of the General Construction Law, the District is regarded as a state, but there is no secretary of such state, no county clerk, and no court of any county therein. Certificates by the clerk of the supreme court of the District do not comply with the law.

Furthermore, it is often difficult to determine where a certificate of authentication purports to be made by a clerk of a court, whether the court is, or is not, a court of a county. Formerly the law only required that the authenticating officer should be a clerk of a court of record in the proper county. For example, in Virginia, the county courts have been recently abolished. In some cities and towns there are corporation or husting courts, whose clerks perform the same duties as formerly were performed by the clerks in the county courts. Thus in practice difficult questions arise under this section as it now stands.

All these difficulties can be remedied by amending subd. 3 so that it shall require the certificate of authentication to be made by "the secretary of state of the state, or the clerk, register, recorder or prothonotary of a county" (in the state or in the Dominion of Canada, as the case may be), "or by the clerk of any court in such state or dominion having by law a seal." The proposed changes do not alter the law in any material respects and add to, rather than detract from, the security of owners of real property. But the changes do place the section in a practical form.

The following amendment is suggested:

"3. Where made by the officer of a state of the United States, or of the Dominion of Canada, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, or by the clerk, register, recorder or prothonotary of [the] a county, city or parish in which the [officer making the original certificate resided, when the certificate was made] *certificate purports to be made*, or by the clerk of any court [of that

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county, city or parish] *in such state or dominion* having by law a seal. All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property heretofore authenticated by any of the officers above referred to are confirmed saving, however, the rights of purchasers in good faith and for a valuable consideration whose conveyance shall have been duly recorded before this act shall take effect; this act shall not affect any action or legal proceeding now pending."

Signature of the secretary of state to a certificate of authentication should be made personally. Rept. of Atty. Genl. (1901), 259.

See, generally, *Cream City Furniture Co. v. Squier* (1893), 2 Misc. 438, 21 N. Y. Supp. 972.

§ 312. Contents of certificate of authentication.—An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that, at the time of taking the acknowledgment or proof, the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer; and that he verily believes the signature to the original certificate is genuine; and if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is genuine. A clerk's certificate authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledgment of proof was taken, was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 261; originally revised from L. 1850, ch. 270, § 4; L. 1875, ch. 136, § 2; L. 1848, ch. 195, § 2, as amended by L. 1894, ch. 729; L. 1870, ch. 208, § 1, in part; L. 1867, ch. 557.

Sufficiency of county clerk's certificate.—See *Thorn v. Mayer* (1895), 12 Misc. 487, 33 N. Y. Supp. 664.

Sufficiency of certificates taken in foreign state.—See *Goddard v. Schmoll* (1898), 24 Misc. 381, 53 N. Y. Supp. 402; *Matter of Wilcox* (1892), 48 N. Y. St. Rep. 549, 21 N. Y. Supp. 780.

The certificate of authentication executed by the clerk of a court in the State in which the acknowledgment was taken is defective where the clerk, instead of certifying, in accordance with the provisions of the statute, that he is well acquainted with the handwriting of the notary and verily believes that his signature to the acknowledgment is genuine, merely certifies that said notary is "duly commissioned and qualified, and that full faith and credit are due to all his acts as such." *Freedman v. Oppenheim* (1903), 80 App. Div. 487, 81 N. Y. Supp. 110.

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§ 313. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.—When the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or indorsed upon the instrument, if such officer and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state. To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or prothonotary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 262; originally revised from L. 1858, ch. 259.

§ 314. Proof when witnesses are dead.—When the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of each witness examined, must be set forth by the officer taking the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not

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entitle the conveyance or the record thereof, or a transcript of the record, to be read in evidence.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 263; originally revised from R. S., pt. 2, ch. 3, §§ 30-31.

Proof of handwriting.—Where both the grantor in an unacknowledged deed and the subscribing witness thereto are dead, proof of the handwriting of each of them is sufficient to warrant the admission of the deed in evidence. *Biglow v. Biglow* (1899), 39 App. Div. 103, 56 N. Y. Supp. 794.

§ 315. **Recording books.**—Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets he must record all conveyances and other instruments absolute in their terms delivered to him, pursuant to law, to be so recorded, which are not intended as mortgages, or securities in the nature of mortgages, and in the other set, such mortgages and securities delivered to him.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 264; originally revised from R. S., pt. 2, ch. 3, § 2.

Manner of recording instruments.—Although the clerk should record an instrument delivered to him *in hæc verba*, a legal equivalent has been held to be sufficient. *Putnam v. Stewart* (1884), 97 N. Y. 411, 416.

The recording of an instrument in the wrong book does not constitute constructive notice. *Gillig v. Maass* (1863), 28 N. Y. 191; *Bank for Savings in N. Y. v. Frank* (1879), 45 N. Y. Super. (13 J. & S.) 404, 407; *Stoddard v. Rotton* (1859), 18 N. Y. Super. (5 Bosw.) 378, 382; *Howells v. Hettrick* (1897), 13 App. Div. 366, 43 N. Y. Supp. 183, *affd.* (1899), 160 N. Y. 308, 54 N. E. 677.

§ 316. **Indexes.**—Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the books of record in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages, and another set for conveyances and other instruments not intended as such mortgages or securities. Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees, and the other list consisting of the names of the grantees or mortgagees, followed by the names of their grantors or mortgagors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record. This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes. A recording officer who records a conveyance of real property, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head, "grantors," the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

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Source.—Former Real Prop. L. (L. 1896, ch. 547) § 265; originally revised from L. 1843, ch. 199, §§ 1-3.

The index is not an essential part of a record and may be omitted by the clerk without rendering the record defective in anything essential. It is the intention of the recording act that the index shall serve as a guide merely to the record to which it refers. *Mut. Life Ins. Co. v. Dake* (1881), 87 N. Y. 257.

Power of board of supervisors to contract with county clerk for reindexing of records.—*Wadsworth v. Board of Supervisors* (1916), 217 N. Y. 484, 112 N. E. 161.

The board of supervisors of Delaware county are authorized by law to approve and audit a certain bill of the county clerk of said county for \$521.43, necessarily expended for preparing proper indexes, pursuant to this section. *Rept. of Atty. Genl.* (1912) 531.

Extra compensation to county clerk for indexing records.—A county clerk should not be required to make entirely new indexes of the records of the county as a part of his regular work. Extra compensation may be provided by the board of supervisors. *Wadsworth v. Board of Supervisors* (1910), 139 App. Div. 832, 124 N. Y. Supp. 334.

§ 317. Order of recording.—Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 266; originally revised from R. S., pt. 2, ch. 3, § 24.

Mistakes or errors of recording officer; effect of.—It has been held that leaving an instrument required by law to be recorded in the proper office for record is all that a party is bound to do, and that the failure of a public officer to perform his duty will not prejudice a party who has complied with a statute made for his protection. *Droge v. Cree* (1891), 39 N. Y. St. Rep. 264, 14 N. Y. Supp. 300, and cases cited. Thus, a purchaser is not deprived of his rights by the neglect or errors of the county clerk in recording and indexing an instrument. *Bedford v. Tupper* (1883), 30 Hun 174; *Simonson v. Fallhee* (1881), 25 Hun 570, 573.

Where a mortgage was signed "Schelleng" and in recording it the clerk entered the names as "Shelleng" but wrote after each name "In German," and the correct name was Schilling, the record was constructive notice. *Muehlberger v. Schilling* (1888), 19 N. Y. St. Rep. 1, 3 N. Y. Supp. 704.

Recording lease.—A lease, duly acknowledged and delivered for record to the proper county clerk, is to be considered recorded from the time of delivery; a bona fide purchase at a foreclosure sale under a mortgage subsequently given to a third party, takes subject to the lease and is chargeable with knowledge of its existence, although the clerk never recorded it. *Reid v. Town of Long Lake* (1904), 44 Misc. 370, 89 N. Y. Supp. 993.

§ 318. Certificate to be recorded.—The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 267; originally revised from R. S., pt. 2, ch. 3, § 20.

See *Smith v. Tim* (1884), 14 Abb. N. C. 447, 450.

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§ 319. **Time of recording.**—The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must indorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 268; originally revised from R. S., pt. 2, ch. 3, § 25.

The object of this section is to fix the time when instruments are recorded, so that rights depending upon the time of record may be determined by evidence practically conclusive. The section does not require that the clerk shall sign the record or that he shall sign the entry of time required to be made. *Thorn v. Mayer* (1895), 12 Misc. 487, 494, 33 N. Y. Supp. 664.

§ 320. **Certain deeds deemed mortgages.**—A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 269; originally revised from R. S., pt. 2, ch. 3, § 3.

Deed deemed a mortgage.—A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage. *People v. Gass* (1912), 206 N. Y. 609, 100 N. E. 404.

Whether a bank derives an advantage or not from the recording of a deed to it absolute on its face but in fact a mortgage, where the defeasance is not also recorded therewith, does not affect the right of the state to exact a mortgage tax if the deed is in fact a mortgage, and the state will not be foreclosed from its effort to collect said tax by reason of section 320 of the Real Property Law, where the possibility of an undisclosed understanding between the apparent grantee and grantor of the property may exist. *Matter of Mechanics Bank of Brooklyn* (1913), 79 Misc. 131, 140 N. Y. Supp. 698, revd. on other grounds (1913), 156 App. Div. 343, 141 N. Y. Supp. 473, affd. (1913), 209 N. Y. 526, 102 N. E. 1106.

Where absolute deeds of certain property are executed but simultaneously therewith an agreement is executed by the parties to such deeds, that the grantees simply take such property to secure and protect certain creditors, the grantees to simply hold such property for sale and from the purchase price to pay such creditors, but the residue of such purchase price to be returned after such payment to the grantor, such deeds must be considered mortgages given for the security of such creditors and the agreement must not be recorded without paying a mortgage tax. *Rept. of Atty. Genl.* (1914) 18.

A deed executed by a corporation and recorded simultaneously with the consent of the stockholders of said corporation to the execution of the deed, which, among other things, provided that the deed, though absolute upon its face, should operate as a mortgage, must be regarded as a mortgage. *Rept. of Atty. Genl.* (1909) 525.

A deed of conveyance and a simultaneously executed sealed instrument, in which the grantee agrees to reconvey to the grantor upon payment in one year of the consideration named in the deed and interest, are to be deemed a mortgage.

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and where these instruments are never recorded as a mortgage, but the deed of conveyance is recorded as a conveyance, a mortgage executed by the said grantor before the said deed of conveyance but recorded after it has priority over the same. *Hoschke v. Hoschke* (1903), 42 Misc. 125, 85 N. Y. Supp. 1006.

As to when a deed is deemed a mortgage, see *Kraemer v. Adelsberger* (1890), 122 N. Y. 467, 25 N. E. 859; *Barry v. H. B. F. Ins. Co.* (1888), 110 N. Y. 1, 24 N. E. 942; *Odell v. Montrose* (1877), 68 N. Y. 499; *Ensign v. Ensign* (1890), 120 N. Y. 655, 17 N. E. 405; *Mooney v. Byrne* (1900), 163 N. Y. 86, 57 N. E. 163.

The recording of a mortgage as a conveyance is ineffectual to secure it priority. *Hoschke v. Hoschke* (1903), 42 Misc. 125, 85 N. Y. Supp. 1006.

§ 321. Recording discharge of mortgage.—A mortgage registered or recorded must be discharged upon the record thereof, by the recording officer, when there is presented to him the certificate signed by the mortgagee, his personal representative or assignee, and acknowledged or proved and certified in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded and filed; and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof. After such discharge has been recorded the recording officer shall make and deliver to the person in whose interest such discharge of mortgage is executed and recorded, his certificate setting forth the names of the mortgagor and mortgagee, the liber and page at which, the time when, such mortgage was recorded, and the date on which said mortgage was satisfied and discharged.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 270, as amended by L. 1903, ch. 490, L. 1907, ch. 347; originally revised from R. S., pt. 2, ch. 3, §§ 28, 29.

Satisfaction piece; by whom executed.—A satisfaction piece may be executed by one of two or more mortgagees and is sufficient to authorize the discharge of the mortgage from record as to all the mortgagees. *People ex rel. Eagle v. Keyser* (1863), 28 N. Y. 226, 232.

A foreign executor, no letters testamentary having been issued in this state, is a "personal representative" within the meaning of this section, and is entitled to record a satisfaction piece. *People ex rel. Lewkowitz v. Fitzgerald* (1893), 29 Abb. N. C. 471, 21 N. Y. Supp. 911. Execution of a satisfaction piece by an administratrix. See *Matter of Wadsworth* (1899), 27 Misc. 264, 57 N. Y. Supp. 911.

Recording release or discharge.—A release or discharge of a mortgage cannot be recorded unless the mortgage is recorded. Rept. of Atty. Genl. (1911) 414.

An unrecorded release of part of mortgaged premises is ineffective as against an assignee of the mortgage in good faith and for value. *Gibson v. Thomas* (1903), 85 App. Div. 243, 83 N. Y. Supp. 552, *affd.* (1905), 180 N. Y. 483, 73 N. E. 484, 70 L. R. A. 768.

§ 322. Recording discharge of mortgage in counties embraced in cities of first class.—In counties wholly embraced in a city of the first class, no mortgage shall be discharged of record, unless in addition to the certificate provided and required by the preceding section, there shall be presented to the recording officer for cancellation the original mortgage, or a certified copy of an order made and entered as hereinafter provided. The said officer

shall, at the time of the discharge of said mortgage, cancel said original mortgage by effacing the signatures thereto, without obliterating the same, and shall file the same in his office and keep the same so filed for the term of ten years. If for any reason said mortgagee, his personal representative or assign can not produce said original mortgage, the said officer shall not discharge said mortgage until there shall be delivered to him a certified copy of an order made and entered as hereinafter provided, which order shall be recorded and filed with the certificate of discharge, or the substitute for said certificate of discharge hereinafter referred to, and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by an officer upon the record thereof. Where the mortgage shall have been lost, mutilated or destroyed, or upon which the signature or signatures are wholly obliterated or removed, or where for any reason production of said mortgage is rendered impossible or is refused by the person having the same in his possession, any person having any interest in securing the discharge of the same may apply to the supreme court or the county court in or of the county in which property affected by the mortgage, or any part thereof, is situated, upon a petition duly verified, containing the name and address of the owner of the property covered by the mortgage, the name and address of the owner of the bond and mortgage, to the best of the petitioner's knowledge and belief, and the owner thereof as appears of record, a full description of the mortgage and of any assignments thereof, that may appear upon the record, including the names of the mortgagor, mortgagee, assignor, assignee, date, amount, and the place, book, page and time of record of said mortgage and any assignments thereof, and a description of the property affected thereby, and showing the loss, mutilation or destruction of the mortgage, or obliteration or removal of the signature or signatures thereon or therefrom, or the impossibility of producing said mortgage, or the refusal to produce the said mortgage by the person having the same in his possession, and the interest of the petitioner in the property or the mortgage, for an order dispensing with the production of the said mortgage and directing the discharge thereof. Eight days' personal notice of the application for such order shall be given to the then present owner of the real estate, and the mortgagor, the mortgagee, his or their personal representatives, heirs, successors or assigns as the case may require, except that where any of the parties upon whom service is herein required to be made can not with due diligence be personally served, the court to which the petition is presented may direct such mode of service as may appear proper. If sufficient cause be shown, the court may issue an order to show cause upon the petition returnable in less than eight days. Upon the return day of such notice or order to show cause, the court, upon due proof of service of the notice, or order to show cause, upon the parties above specified, and on further proof of the identity of the person presenting the petition, shall inquire, in such manner as it may deem advisable, into the truth of the facts set out in

the petition, and upon proof satisfactory to the court that said mortgage has been lost, mutilated or destroyed, or that the signature or signatures have been obliterated or removed thereon or therefrom, or that the production of said mortgage is impossible, or that its production is refused by the person having the same in his possession, and as to identity of the mortgagee, his personal representatives or assigns, and such proof in relation thereto as to the court may seem desirable, the court shall make an order dispensing with the production of the mortgage and directing its cancellation of record, as hereinabove provided. In case the mortgagee, his personal representatives or assigns, shall not appear in court upon the return day of said notice or order to show cause, or shall refuse or neglect, if present, to give the certificate for discharge above specified, the court may direct the amount due upon said bond and mortgage to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part, and the mortgage to be cancelled of record in all counties where any of the lands affected by said mortgage are situated upon the production of a certified copy of the order and the receipt of such officer showing that the amount of said mortgage has been deposited with him, which receipt shall be a substitute for the certificate of discharge above specified. If in the proceedings had under and in pursuance of this section it shall appear to the satisfaction of the court that the principal sum and interest due upon said mortgage, or the bond accompanying the same has been fully paid, then the said deposit of money hereinabove provided for shall be dispensed with. The money deposited shall be payable to the mortgagee, his personal representatives or assigns, upon an order of the supreme or county court directing the payment thereof to him, made upon such evidence as to his right to receive the same as shall be satisfactory to the court. (*Amended by L. 1912, ch. 254.*)

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 270-a; as added by L. 1903, ch. 490, § 2, and amended by L. 1907, ch. 289.

Reasons for requirement; construction; right of court to order mortgage cancelled; costs.—The provision requiring the production of a mortgage on its being satisfied, and the retaining of it on file for the term of ten years therefrom, in a community like the county of New York where such a large number of mortgages exist, is a wise one for preventing subsequent fraudulent negotiations of mortgages which have been paid. While the language of the section is not as clear as it might be, it is perfectly plain that it provides a means whereby a mortgagee may properly satisfy of record a mortgage which he is unable to produce because of its loss or destruction; and the Legislature has prescribed that he may apply to the court, setting forth the loss and the reasons why he was unable to produce the mortgage, and if those reasons are satisfactory the court is given the power to order the mortgage cancelled upon production of a certified copy of such order and the satisfaction piece alone. Where the recording officer opposes a motion for such an order deeming such action to be his duty he is not liable for costs. *Matter of Leckie* (1909), 131 App. Div. 816, 116 N. Y. Supp. 32.

Application; construction with section 333 added by Laws of 1911.—In a county embraced wholly in a city of the first class a mortgagor or any person having an interest in procuring the discharge of a mortgage which has been lost, mutilated

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or destroyed, should upon proof of the facts apply to the court under this section for an order dispensing with the production of the original mortgage and should not proceed under section 333 of said law, as added by chapter 574 of the Laws of 1911, which only applies to cases of willful neglect or refusal to produce the original mortgage, while section 322 covers the case of inability. The latter section is not in conflict with the former, nor has it repealed expressly or by implication. Both are in *part materia*, and are to be construed as equally effective, but applicable to different situations. *Matter of Black* (1912), 150 App. Div. 532, 135 N. Y. Supp. 504.

Section cited.—*Matter of Connell* (1912), 77 Misc. 251, 253, 137 N. Y. Supp. 667.

§ 323. Recording discharge of mortgage in counties embraced in cities of first class where property lies in more than one of such counties.—In any case, however, in which the land affected by a mortgage which is to be discharged lies in more than one such county, and in which the mortgage has been recorded in more than one such county, the original mortgage need be filed in one of said counties only. For the discharge of such mortgage in the other county or counties where the land is located there shall be required to be filed, together with a properly executed satisfaction piece, a copy of the mortgage certified to by the recording officer of the county in which the original mortgage shall have been filed, together with a certificate of said recording officer, stating that the said mortgage has been discharged in his county by the filing of the original mortgage, and stating the time when the mortgage was so discharged. The said certificate shall be recorded and filed with the satisfaction piece in the other county, and a reference shall be made to the book and page, containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof. The recording officer, however, shall not discharge the said mortgage without first having compared his record of it with the certified copy of the recording officer of the other county, so as to satisfy himself of the identity of the records in the two counties, and he shall keep the said certified copy on file for ten years the same as though it were the original mortgage.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 270-b, as added by L. 1907, ch. 621.

§ 324. Effect of recording assignment of mortgage.—The recording of an assignment of a mortgage is not in itself a notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate a payment made by either of them to the mortgagee.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 271; originally revised from R. S., pt. 2, ch. 3, § 41.

Effect of recording assignment.—The record of an assignment is constructive notice to all persons claiming a right under the mortgage by assignment or otherwise, but is not constructive notice to its subsequent purchasers and incumbrancers of the land deriving a title in good faith from the mortgagor. *Viele v. Judson* (1880), 82 N. Y. 33, 37; *Curtis v. Moore* (1897), 152 N. Y. 159, 46 N. E. 163; *Brewster v. Carnes* (1886), 103 N. Y. 556, 9 N. E. 323; *Belden v. Meeker* (1872), 47 N. Y. 307; *Reed v. Marble* (1843), 10 Paige 409. Where a person in possession

of land derives title from a mortgagor, there is nothing in the apparent possession of the land which is hostile to the mortgage. The occupant is supposed to hold, subject to the mortgage, and there is nothing to put the assignee of the mortgage on inquiry. *Briggs v. Thompson* (1895), 80 Hun 607, 33 N. Y. Supp. 765.

Recording of an assignment is not constructive notice thereof to the mortgagor; so held in respect to the scheduling of an assigned mortgage in the name of the original mortgagee by a bankrupt mortgagor. *Mueller v. Goerlitz* (1907), 53 Misc. 53, 103 N. Y. Supp. 1037.

Where a mortgagor, learning of the assignment of the mortgage, deals with the assignee, she is not protected by this section. *Davies v. Jones* (1899) 29 Misc. 253, 61 N. Y. Supp. 291.

Protection to assignee.—The assignee of a mortgage takes it subject to the equities between the original parties. *Rapps v. Gottlieb* (1894), 142 N. Y. 164, 36 N. E. 1052. And the recording act has no application to protect the assignee against a defense founded upon such an equity. *Frear v. Sweet* (1890), 118 N. Y. 454, 462, 23 N. E. 910. Under this section, however, an assignee of a mortgage may, as against a prior unrecorded mortgage, acquire a better right than was possessed by his assignor. *Decker v. Boice* (1880), 83 N. Y. 215, 221; *Westbrook v. Gleason* (1879), 79 N. Y. 23.

One object of this section is to protect a subsequent assignee of the mortgagor of the same mortgage from being defrauded through a prior assignment not before required to be recorded, and of which he might have no notice. *Decker v. Boice* (1880), 83 N. Y. 215, 222.

The record of an assignment of a mortgage protects the assignee against a subsequent unauthorized discharge of the mortgage by the mortgagee. *Larned v. Donovan* (1898), 155 N. Y. 341, 49 N. E. 942, affg. (1895), 84 Hun 533, 32 N. Y. Supp. 731. A bona fide purchaser for value and without notice, who has procured the assignment of a mortgage to be recorded, will be protected against release, actually executed but unrecorded. *St. John v. Spalding* (1873), 1 T. & C. 483, 485.

A failure to record an assignment of a mortgage does not render a title by foreclosure sale defective. *Fryer v. Rockefeller* (1875), 63 N. Y. 268. Assignments, if not recorded, are void not merely as against subsequent purchasers of the same mortgage, but also as against subsequent purchasers of the mortgaged premises, whose interests may be affected by such assignments, and whose conveyances are first recorded. *Bacon v. Van Schoonhoven* (1882), 87 N. Y. 446, 450.

Payments by mortgagor to mortgagee.—The assignee of a mortgage, if he wishes to protect himself against bona fide payments by the mortgagor to the mortgagee, must notify the mortgagor of the assignment. *Van Keuren v. Corkins* (1876), 66 N. Y. 77, 80; *Pettus v. McGowan* (1885), 37 Hun 409; *O'Callaghan v. Barrett* (1892), 50 N. Y. St. Rep. 166, 21 N. Y. Supp. 368. See also *New York Life Ins. Co. v. Smith* (1847), 2 Barb. Ch. 82, 84; *James v. Morey* (1823), 2 Cow. 246. A mortgagor, even after the recording of the assignment of the mortgage, is protected in making payments to the mortgagee until he receives notice of the assignment or of facts sufficient to put him on inquiry as to the continuance of the mortgagee's title. If he receives notice of facts which would enable him, if he made the requisite inquiry, to ascertain the truth, then he is bound to make such inquiry, and if he omits to do so, he is chargeable with bad faith and is not protected in thereafter making payments to the mortgagee. In the absence of such notice the fact that the mortgage was not in the possession of the mortgagee at the time that the payments were made, does not affect the validity of the payments. *Barnes v. L. I. Real Estate Exchange and Investment Co.* (1903), 88 App. Div. 83, 84 N. Y. Supp. 951.

A person taking an assignment of a mortgage, or an interest in it, must give

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actual notice to the debtor, otherwise the latter may treat the former holder of the mortgage as its owner, especially if he retains possession of the bond and mortgage, and payments made to him will be deemed proper; constructive notice of the assignment by merely recording it is not sufficient, the debtor is not bound by it. *Thomas v. Zahka* (1917), 99 Misc. 333, 338, 164 N. Y. Supp. 193.

Action to remove cloud of recorded assignment.—This section has no application to an action by the purchaser of mortgaged premises to remove the cloud of a recorded assignment of the mortgage, where, although the mortgagee had undertaken to satisfy the mortgage after its assignment and before the plaintiff's purchase of the premises, there is no evidence that the mortgagor made any payment to the mortgagee, or gave him any consideration, for the satisfaction of the mortgage. *Larned v. Donovan* (1898), 155 N. Y. 341, 49 N. E. 942, affg. (1895), 84 Hun 533, 32 N. Y. Supp. 731.

See also cases cited under section 291, ante.

§ 325. Recording of conveyances made by treasurer of Connecticut.—A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the state of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 272; originally revised from R. S., pt. 2, ch. 3, § 21.

§ 326. Revocation to be recorded.—A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 273; originally revised from R. S., pt. 2, ch. 3, § 40.

§ 327. Penalty for using long forms of covenants.—The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in section two hundred and fifty-three and two hundred and fifty-four of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 274; originally revised from L. 1890, ch. 475, § 7.

§ 328. Certain acts not affected.—Nothing contained in this article repeals or affects any act providing for recording and indexing instruments affecting real property in the City of New York, according to city blocks or other limited areas.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 275.

§ 329. Actions to have certain instruments canceled of record.—An owner

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of real property or of any undivided part thereof or interest therein, may maintain an action to have any recorded instrument in writing relating to the same, other than those required by law to be recorded, declared void or invalid, or to have the same canceled of record as to said real property, or his undivided part thereof or interest therein.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 276; originally revised from L. 1880, ch. 530, § 1.

Cancellation of bond and mortgage, action for. See *Rapps v. Gottlieb* (1894), 142 N. Y. 164, 36 N. E. 1052; *Swarthout v. Ranier* (1894), 143 N. Y. 499, 38 N. E. 726.

Cancellation of deed given on sale of land for nonpayment of taxes. See *Sanders v. Downs* (1894), 141 N. Y. 422, 36 N. E. 391.

Building contract not to be recorded.—A contract for the alteration of a building and containing a clause that in lieu of payment a second mortgage upon the premises should be taken, is not an equitable mortgage, nor is it an instrument by which any estate or interest in real estate is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected. It is, therefore, not entitled to be recorded, and, if recorded, may be cancelled of record under the above section. *Davidson v. Fox* (1901), 65 App. Div. 262, 73 N. Y. Supp. 533.

§ 330. Officers guilty of malfeasance liable for damages.—An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 277; originally revised from R. S., pt. 2, ch. 3, § 35.

References.—False certifying as to record of deeds and instruments, a felony, Penal Law, § 1860. Making false certificates a misdemeanor, *Id.* § 1861. Recording instrument without acknowledgment, a misdemeanor, *Id.* § 1862.

§ 331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.—A copy of a law of a foreign country or of a decree of the executive power of such a country, appointing an agent or attorney with power to execute and deliver in the name or on behalf of such foreign country, any instrument in writing granting, assigning, surrendering or in any manner affecting any estate or interest of such government in real property within this state, or assigning or discharging any lien or claim of such government upon real property within this state, or of a law or decree revoking such an appointment, if in English, or a translation into English of any such law or decree, if the original thereof be in a language other than English, when certified and recorded as hereinafter provided, shall be presumptive evidence of the authority of such agent or attorney. Certification of such copy or translation shall be made under the great seal of such foreign country and shall be to the effect that the same is a true copy or translation of such law or decree. Such copy or translation of such law or decree, when so certified, may

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be recorded in the office of the clerk or register of any county of this state, and such copy or translation when so certified and recorded, or a certified copy of the record thereof, shall be received as evidence in any court of this state. The authority conferred under any instrument so recorded shall not be deemed revoked as to property situated in any county except by the recording in such county of a copy or translation of a law or decree to that effect, duly certified in the manner hereinbefore provided. Nothing in this section shall in any way affect the right or power of a foreign country to acquire, hold or convey real property in this state, or be construed to confer any such right or power.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 278, as added by L. 1908, ch. 35.

§ 332. **The record of certain conveyances validated.**—The record made prior to January first, nineteen hundred and sixteen, in the county clerk's or register's office of any county in this state of any deed or mortgage or of any assignment or satisfaction piece of a mortgage otherwise authorized to be recorded therein when the acknowledgment or proof was taken in another county, notwithstanding the failure to append thereto a certificate as to the authority of the notary public, or other officer, who took the acknowledgment or proof, to take the same, shall be in all respects as valid and effectual as though such certificate had been appended to such instrument. Provided only that the notary public, or other officer, was duly authorized at the time of taking the proof or acknowledgment to take the same in the county where the instrument is recorded or in the county where the same was taken, but this section shall not affect any action or proceeding pending on January first, nineteen hundred and sixteen. (*Amended by L. 1916, ch. 365.*)

Source.—L. 1904, ch. 235, as amended by L. 1905, ch. 377.

§ 333. **When conveyances of real property not to be recorded.**—After September thirtieth, nineteen hundred and ten, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said September thirtieth, nineteen hundred and ten, unless the residence of the purchaser and if in a city of over five hundred thousand inhabitants according to the last federal census the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance. After May first, nineteen hundred and fourteen, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said first day of May, nineteen hundred and fourteen, if in a city of over two hundred thousand inhabitants according to the last federal census, unless the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance. (*Added by L. 1910, ch. 227, and amended by L. 1914, ch. 309.*)

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The term "residence," as used in this section, refers only to individuals. Hence, a conveyance of real property to a corporation need not on being presented for record state the principal place of business of the purchaser. Opinion of Atty. Genl. (1913), 343.

§ 333. Discharge of mortgage; proceedings for.—1. Upon the request of the mortgagor or of any other person interested in the mortgaged premises made at any time that payment thereof is entitled to be made and upon presentation of a satisfaction piece certifying that the mortgage has been paid or otherwise satisfied and discharged and consenting that it be discharged of record, and upon tender of payment of the sum or sums due as principal and interest upon the mortgage or upon the debt or obligation secured thereby, together with the fees allowed by law for taking the acknowledgment of a deed, a mortgagee of real property situate in this state, must execute and acknowledge before a proper officer, in like manner as to entitle a conveyance to be recorded, such satisfaction piece, and thereupon deliver the same and the mortgage to the person making such tender of payment as aforesaid.

2. Upon the failure or refusal of any such mortgagee to comply with the foregoing provisions of this section any person having an interest in the mortgage or the debt or obligation secured thereby or in the mortgaged premises may apply to the supreme court or a justice thereof, or to the county court or a judge thereof, in or of any county in which the mortgaged premises or any part thereof are situated in whole or in part, upon a petition, for an order to show cause why an order should not be made by such court canceling and discharging the mortgage of record, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as canceled and discharged, and further ordering and directing that the debt or other obligation secured by the mortgage be canceled, upon condition that the sums tendered pursuant to the foregoing provisions of this section to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part. Said petition must be verified in like manner as a verified pleading in an action in the supreme court and it must set forth the grounds of the application.

3. In any case where an actual tender, as provided in subdivision one of this section cannot with due diligence be made within this state, any person having an interest in the mortgage or the debt or obligation secured thereby, or in the mortgaged premises, may apply to the supreme court or a justice thereof or to the county court or a judge thereof, in or of any county in which the mortgaged premises or any part thereof are situated in whole or in part, upon petition setting forth the grounds of the application and verified as aforesaid, for an order to show cause why an order should not be made by said court canceling and discharging the

mortgage of record, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as canceled and discharged and further ordering and directing that the debt or other obligation secured by the mortgage be canceled, upon condition that the principal sum of the mortgage or any unpaid balance thereof, with interest up to the date when said order shall be entered and the aforesaid fees allowed by law, be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part.

4. Eight days' notice of the application for either of the orders provided for in subdivisions two and three of this section shall be given to the then mortgagee of record and also, if the petition show that there is a mortgage not of record, to such mortgagee. Such notice shall be given in such manner as the court or the judge or justice thereof to whom the petition is presented may direct, and said court or judge or justice may require such longer notice to be given as may seem proper. If sufficient cause be shown the court or judge or justice thereof may issue such order to show cause returnable in less than eight days.

5. Upon the return day of such order to show cause, the court, upon proof of due service thereof and on proof of the identity of the mortgagee and of the person presenting the petition, shall inquire in such manner as it may deem advisable, into the truth of the facts set forth in the petition, and in case it shall appear that said principal sum or any unpaid balance thereof and interest and the said fees allowed by law have been duly tendered but not accepted and said satisfaction piece has been duly presented for execution, or that such tender and presentation could not have been made within this state with due diligence, then the court shall make an order directing the sums so tendered, or in a case where such tender could not have been made as aforesaid; directing the principal sum or any unpaid balance thereof, with interest thereon to the date of entry of said order and the aforesaid fees allowed by law, be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the application herein is made; and directing and ordering that upon such payment the debt or other obligation secured by the mortgage be canceled and further directing the register or clerk of any and every county in whose office said mortgage shall have been recorded to mark said mortgage canceled and discharged of record upon the production and delivery to such register or clerk of a certified copy of the order and the receipt of such officer, showing that the amount required by said order has been deposited with him, which certified copy of said order and which receipt shall be recorded, filed and indexed by any such register or clerk in the same manner as a certificate of discharge of a mortgage. Said receipt need not be acknowledged to entitle it to be recorded. The money deposited shall be payable to the mortgagee, his

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personal representative or assigns, upon an order of the supreme court or county court, directing the payment thereof to him upon such evidence as to his right to receive the same as shall be satisfactory to the court.

6. Wherever any register or clerk shall record any order and receipt as hereinbefore specified, he shall mark the record of said mortgage as follows:

“Canceled and discharged by order of the Court, County of, dated and filed,” and thereupon the lien of such mortgage shall be deemed to be discharged and the debt secured thereby shall be deemed to be canceled. Said register or clerk shall be permitted to charge for recording and filing said order and receipt, the same fees to which he is now entitled for recording and filing a certificate of satisfaction of a mortgage.

7. The word “mortgagee” whenever used herein shall be construed to include the mortgagee or any other persons entitled to enforce or satisfy said mortgage and the personal representatives, successors and assigns, of such mortgagee or person, as the case may be. (*Added by L. 1911, ch. 574.*)

§ 334. **Maps to be filed; penalty for nonfiling.**—It shall be the duty of every person or corporation who, as owner or agent, subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, to cause a map thereof, together with a certificate of the surveyor or draughtsman attached showing the date of the completion of the survey and of the making of the map and the name of the subdivision as stated by the owner, to be filed in the office of the county clerk or register of deeds of the county where the property is situated prior to the offering of any such lots, plots, blocks or sites for sale; and a duplicate copy of such map shall also be filed in the office of the city, town or village clerk where the property is situated before any such sale. All such maps must be printed or drawn upon tracing cloth, linen or canvas backed paper. All of such maps shall be placed and kept, by some suitable method, in consecutive order and shall be consecutively numbered in the order of their filing and shall be indexed under the initial letters of all substantives in the title of the subdivision. A failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision, or of the unsold lots therein, to a penalty to the people of the state of twenty-five dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map. (*Added by L. 1910, ch. 415, and amended by L. 1916, ch. 143 and L. 1917, ch. 592, in effect May 21, 1917.*)

ARTICLE X.

DISCHARGE OF ANCIENT MORTGAGES.

Section 340. When mortgagor may petition for discharge of mortgage of record.

341. Presentation of petition.

342. Order to show cause.

343. Proceedings thereon.

344. When county clerk to discharge mortgage of record.

§ 340. When mortgagor may petition for discharge of mortgage of record.

—The mortgagor, his heirs or any person having any interest in any lands described in any mortgage of real estate in this state, which is recorded in this state, or mentioned in a deed recorded in this state, and which, from the lapse of time, is prescribed to be paid, or in any moneys into which said lands have been converted under a decree of a court of competent jurisdiction, and which are held in place of such lands to answer such mortgage, may present his petition to the courts mentioned in this article, asking that such mortgage may be discharged of record. Such petition shall be verified; it shall describe the mortgage, and when and where recorded, or if such mortgage is not recorded that the same may be adjudged to have been paid and to be no longer a lien upon the lands therein described, and shall allege that such mortgage is paid; that the mortgagee has, or, if there be more than one mortgagee, that all of them have been dead for more than five years; or if such mortgage has been assigned by an instrument in writing for that purpose executed and acknowledged, so as to entitle the same to be recorded, and such instrument of assignment has been recorded in the office of the clerk of the county where the mortgaged premises, or some portion thereof is situated, and the assignee or assignees of said mortgage have been dead for more than five years, such petition shall state such facts, and no statement respecting the mortgagee or mortgagees or the names and places of residence of their heirs shall be required; or if such mortgagee be a corporation or association, that such corporation or association has ceased to exist and do business as such for more than five years; the time and place of his or their death, and place of residence at the time of his or their death; whether or not letters testamentary or of administration have been taken out, or, if said mortgagee or mortgagees, or assignee or assignees at the time of his or their death resided out of this state, whether or not letters testamentary or of administration have been taken out in the county where such mortgaged premises are situated; or if a corporation or association, its last place of business; the names and places of residence, as far as the same can be ascertained, of the heirs of such mortgagee or mortgagees, or assignee or assignees; or, if such mortgagee be a corporation or association, then the names of one or more of the receivers, if any were appointed, or of the person who has the care of the

closing up of the business of such corporation or association, and that such mortgage has not been assigned or transferred, and if such mortgage has been assigned, state to whom and the facts in regard to the same. Provided, however, that if such mortgage has been duly assigned, by indorsement thereof or otherwise, but not acknowledged so as to entitle the same to be recorded, then it shall be competent for the court, at any time within the period aforesaid, upon proof that all the matters hereinbefore required to be stated in said petition are true, and that the assignee of such mortgage if living, or his personal representative if dead, has been paid the amount due thereon, to make an order that such mortgage be discharged of record. Provided, further, that in case of a mortgage which was recorded or adjudged to have been paid and no longer a lien, more than fifty years prior to the presentation of such petition, if the petitioner is unable with reasonable diligence to ascertain the facts herein required to be stated in the petition, other than the fact of payment, the petition may set forth the best knowledge and information of the petitioner in respect thereto and what efforts have been made to ascertain such facts, and if the court shall be satisfied that the petitioner has made reasonable effort to ascertain such facts, and that the same can not be ascertained with reasonable diligence, it may then, in its discretion, proceed upon said petition as hereinafter provided.

Source.—L. 1862, ch. 365, § 1, as amended by L. 1868, ch. 798; L. 1873, ch. 551; L. 1884, ch. 326; L. 1898, ch. 171, and L. 1901, ch. 287.

Consolidators' note.—This article is new. It contains *ipsissimis verbis* the substance of L. 1862, ch. 365, as amended by L. 1868, ch. 798; L. 1873, ch. 551; L. 1882, ch. 100; L. 1882, ch. 278; L. 1884, ch. 326; L. 1898, ch. 174; and L. 1901, ch. 287. Something must be done, in consolidating the statutes, with these acts relating to mortgages and their discharge, and they properly belong in the Real Property Law.

The courts stricken from § 341 no longer exist.

§ 341. Presentation of petition.—Such petition may be presented to the supreme court in the county where the mortgaged premises are situated, or to the county court of such county.

Source.—L. 1862, ch. 365, § 2, as amended by L. 1882, ch. 100.

§ 342. Order to show cause.—The court, upon the presentation of such petition, shall make an order requiring all persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. The names of the mortgagor, mortgagee and assignee, if any, the date of the mortgage and where recorded, and the town or city in which mortgaged premises are situate, shall be specified in the order. The order shall be published in such newspaper or newspapers, and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

Source.—L. 1862, ch. 365, § 3.

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§ 343. **Proceedings thereon.**—The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the facts stated in the petition. The certificate of the proper surrogate or surrogates, whether or not letters testamentary or of administration have been issued, shall be evidence of the fact; and the certificate of the clerk of the county or counties in which the mortgaged premises have been situate, since the date of the said mortgage, shall be evidence of the assignment of such mortgage, or of a notice of the pendency of an action to foreclose such mortgage, and of such other matters as may be therein stated; or if a notice of the pendency of an action to foreclose such mortgage has been filed, then his certificate that such mortgage has never been foreclosed, unless the allegation of payment shall be denied, and evidence be given tending to rebut the presumption of payment, arising from lapse of time, such lapse of time shall be sufficient evidence of payment. Upon being satisfied that the matters alleged in the petition are true, the court may make an order that the mortgage be discharged of record.

Source.—L. 1862, ch. 365, § 4, as amended by L. 1868, ch. 798, and L. 1882, ch. 278.

§ 344. **When county clerk to discharge mortgage of record.**—The county clerk, upon being furnished with a certified copy of such order and paid the fees allowed by law for discharging mortgages, shall record said order and discharge the mortgage of record.

Source.—L. 1862, ch. 365, § 5.

ARTICLE XI.

QUIETING TITLE TO REAL PROPERTY.

Section 360. When special proceeding to quiet title may be maintained.

361. Petition.

362. Order for publication of notice to persons interested.

363. Owners of several parcels may unite in proceedings.

364. Hearing and final order upon non-appearance of adverse claimants.

365. Hearing and final order upon appearance of adverse claimants.

366. Notice of pendency to be filed and recorded.

§ 360. **When special proceeding to quiet title may be maintained.**—Whenever real property shall have been conveyed by a sheriff or referee, pursuant to a judicial decree, which decree has been lost or destroyed, and the defendants (other than lienors or incumbrancers) named in the notice of pendency of the action in which such decree was made, or those who might claim under them, or either of them, are dead, unknown or their whereabouts can not after diligent inquiry be ascertained, the person who has been, or he and those having his estate who have been, for thirty years in actual possession of such property claiming it in fee under said sheriff's

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or referee's deed, which deed shall have been recorded at least thirty years, may maintain a special proceeding for the purpose of establishing judicially his or their title to such real property.

Source.—L. 1890, ch. 503, § 1.

Consolidators' note.—This article is made up of the provisions of ch. 503 of the Laws of 1890, entitled "An act to quiet the title to real property in certain cases, conveyed pursuant to judicial decree, which decree has been lost or destroyed." This proceeding has never found its way into the Code of Civil Procedure and shows the haphazard manner in which the Code of Civil Procedure has been made up. It is a proceeding quite as important as other proceedings in the Code relating to real property and yet it is found in an independent statute. The fact is, that there are quite as many so-called proceedings out of the Code as in. The proceeding given in this article finds a natural place in the Real Property Law.

References.—Actions to compel the determination of a claim to real property, and proceedings thereon. Code Civil Procedure, §§ 1638-1650.

§ 361. **Petition.**—A person or persons, desiring to institute a proceeding under this article, must present a petition to the supreme court at a special term to be held in the judicial district in which the real property is situated, setting forth the facts proving to the satisfaction of the court, that the case is one of those specified in section three hundred and sixty, and must describe the property with common certainty, and state what, if any, liens or incumbrances exist thereon, and the names of the persons, if any, besides the petitioners, who have been in the actual possession of the property during the past thirty years claiming title as owners thereof in fee, and how such title was derived, and shall also annex to said petition a duly certified copy of the sheriff's or referee's deed recorded thirty years since under which petitioners claim title.

Source.—L. 1890, ch. 503, § 2.

§ 362. **Order for publication of notice to persons interested.**—Upon the presentation of such petition, duly verified in the manner prescribed for the verification of pleadings by the code of civil procedure, the said court shall make an order for the publication of a notice requiring all persons claiming any interest in the real property described in such petition to appear before the court at a special term thereof, to be held at a time and place to be therein specified, not less than three months nor more than six months thereafter, and show cause, if any they have, why they should not be forever barred from maintaining any action or proceeding for the recovery of the real property, which shall be substantially described as set forth in said petition, and which notice shall also contain a reference to the time and place of record of the sheriff's or referee's deed referred to in this article. Said publication shall be made once a week for three months successively prior to the return day named in said notice in two newspapers designated in the order as most likely to give notice to any claimant of the property. (*Thus amended by L. 1909, ch. 240, § 70, in effect April 22, 1909.*)

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Source.—L. 1890, ch. 503, § 3.

§ 363. Owners of several parcels may unite in proceedings.—In case the property described in said sheriff's or referee's deed shall have been subdivided, the owner or owners of the several parcels thereof may unite in the same petition and proceeding provided for by this article.

Source.—L. 1890, ch. 503, § 4.

§ 364. Hearing and final order upon non-appearance of adverse claimants.—Upon the return day named in said notice the court shall proceed summarily to inquire into the truth of the matters set forth in the petition, and may appoint a referee for that purpose, and if there shall be no appearance by any person claiming any adverse interest to the petitioners in the real property described in the petition, the court may make a final order declaring that the title of the petitioner to such real property has been judicially established, which final order, together with the petition and order for and proof of publication of the notice, and the proofs taken before the court or referee shall be filed in the office of the clerk of the county in which the real property is situated, and such final order shall be evidence of the facts so declared to be established thereby in all courts and places, and thereafter no action or proceeding for the recovery of the real property described in said final order or any part thereof, or of any interest therein, shall be maintained by any person named as a defendant in the notice of pendency of action referred to in section three hundred and sixty, or by any person or persons claiming under such defendant or either of them.

Source.—L. 1890, ch. 503, § 5.

§ 365. Hearing and final order upon appearance of adverse claimants.—If any person shall appear on the return day of said notice and claim in writing an interest in the real property adverse to that of the petitioners, stating the nature of his claim and his place of residence, the court may proceed in like manner to inquire into the truth of the facts stated in the petition and may make a final order in like manner and with like effect as above provided, except that such final order shall not affect in any way any person who shall have appeared on the return day and asserted a claim adverse to the petitioners, as herein provided for.

Source.—L. 1890, ch. 503, § 6.

§ 366. Notice of pendency to be filed and recorded.—No such final order shall be made until the petitioners named in said proceedings, or their attorney, shall file in the clerk's office of the county in which such real property is situated a notice of the pendency of the said special proceeding, containing the names of all the persons claiming to be then owners of the property in fee, pursuant to said sheriff's or referee's deed, the object of the proceeding, together with a brief description of said property. Each county clerk with whom such notice is filed must immediately record it

in the book kept in his office for recording of notices of pendency of an action, and index it to the name of each person claiming to be owner as aforesaid, and said clerk shall be entitled to receive for his services the same fees therefor as are now allowed by law for filing, recording and indexing a notice of pendency of action.

Source.—L. 1890, ch. 503, § 7.

ARTICLE XII.

REGISTERING TITLE TO REAL PROPERTY.

- Section 370. Application to register title to real property.
371. Applications and proceeding to be in the supreme court; title part of special term.
372. County clerks and registers to be registrars of title.
373. Registrar's bond.
374. Deputy registrars' powers and duties.
375. Compensation of registrars and deputy registrars and registration clerks.
376. Disposition and use of fees received by registrar.
377. Official examiners of title.
378. What owners may apply; what titles may be registered.
379. Contents of application for registration; other papers to be filed.
380. Official examiner's report of title; other evidences of title.
381. Survey, map, or plan to be filed.
382. Notice of application and of pendency of action.
383. Filing of caution.
384. Agent of nonresident applicant.
385. Commencement of the action.
386. Notice of object of action; copy of complaint.
387. Summons and notice to be posted on the land.
388. Guardian ad litem.
389. Any person interested may appear and defend.
390. Title in lands vested; clouds thereon removed.
391. Judgments and orders conclusive.
392. Fraud; action to set aside the judgment or to recover the property.
393. Registration of title.
394. Certificate of title.
395. Title book.
396. Duplicate certificate of title.
397. Owner's receipt for certificate of title.
398. Certificate to include dealings pending registration.
399. Certificate of title as evidence.
400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.
401. Registered property not affected by prescription or adverse possession.
402. Fraud; notice only by registration.
403. Memorial to be carried forward.
404. Registered property to remain registered.
405. Registered property subject to same rights and burdens as unregistered property.

406. Transfers of registered property.
407. Certificate as to part of property remaining after transfer.
408. Book of covenants, restrictions, trusts and forms.
409. Filing, entering and indexing papers pursuant to this act; tickler certificate.
410. Notice of filed papers.
411. Addresses of interested parties; notice.
412. When a transfer is deemed to be registered.
413. New certificates of title.
414. Loss of owner's duplicate.
415. Mortgages, leases and other liens and charges; may be registered.
416. Proceedings to register mortgage, lease or other lien or charge.
417. Judgments, decrees, attachments and other liens to be noted on certificate.
418. Assignment of mortgage, lease, or other lien or charge.
419. Release, discharge or surrender of charge or incumbrance.
420. Enforcement of mortgages, charges, liens and incumbrances.
- 420-a. Registration under judicial sale.
421. Powers of attorney to be filed and registered.
422. Reference of doubtful matters to the court.
423. Death of owner of registered property; transfer of property.
424. Certificate of title during settlement of estate.
425. Title derived through execution of a power in a will.
426. Assurance fund.
427. Compensation from assurance fund.
428. Action against assurance fund.
429. Restrictions on claims against assurance fund.
430. Penalties for fraudulent acts of false certificates.
431. Forgery and fraudulent stamping; penalty.
432. Fees to be charged.
433. Construction of article.
434. Form for official examiner's report of title.
435. Form for certificate of title.

§ 370. Application to register title to real property.—Real property, or any estate, interest, or right therein, the title to which is hereby authorized to be registered, may be brought under the operation of this article by the filing of a complaint, verified as prescribed by the code of civil procedure and praying for registration, with the clerk of the county in which the land, or some portion thereof, is situated. The application may be so made in person by the owner or owners of such property, estate, interest, or right, or by an attorney at law duly authorized so to do. A corporation may also apply by its duly authorized officer or agent. An infant or other person under disability may apply by his legally appointed guardian, or trustee, or committee. The natural person or corporation, in whose behalf the complaint is filed may be known, and is treated in this article, as the applicant, or plaintiff. The complaint so filed may be known, and is treated in this article, as the application. (*Amended by L. 1910, ch. 627.*)

Source.—L. 1908, ch. 444, § 2.

The intention of the Title Registration Act was to provide a new system of

land registration whereby persons can ascertain by an inspection of the register in whom the title to a particular piece of property is vested. *Partenfelder v. People* (1914), 211 N. Y. 355, 105 N. E. It is the purpose to allow an action to register good titles, not to cure bad ones. *Meighan v. Rohe* (1915), 166 App. Div. 175, 151 N. Y. Supp. 785; *Eldert v. Cross Country R. R. Co.* (1915), 88 Misc. 684, 151 N. Y. Supp. 441.

The legislature did not establish a method of registering land titles as a device to enable one party to acquire the title of others without their knowledge. Upon a plaintiff's failure to establish title in an action brought for that purpose it is the duty of the court to dismiss the complaint irrespective of whether any of the defendants have appeared in the action. *Barkenthien v. People* (1915), 213 N. Y. 554, 107 N. E. 1073.

The object of the title registration provisions of the Real Property Law is to establish, by a judgment of court, that the applicant has title so that thereafter the records need not be re-examined, but such provision was not intended as a means for curing defects, or clearing title, or giving to the applicant a title he does not have. *Crabbe v. Hardy* (1912), 77 Misc. 1, 135 N. Y. Supp. 119.

A title which may be registered in such action is one which is marketable and free from reasonable doubts; in other words, such title as a court of equity would compel an unwilling purchaser to accept in a suit for specific performance. *Meighan v. Rohe* (1915), 166 App. Div. 175, 151 N. Y. Supp. 785, modf. (1915), 216 N. Y. 677, 110 N. E. 165.

§ 371. Applications and proceedings to be in the supreme court; title part of special term.—The application for registration must be made to the supreme court; or to a justice thereof, sitting at a special term in any of the counties within the judicial department where the property is situated, and for that purpose said court shall be always open; and its orders, judgments and decrees in cases coming under this article may be made and entered as well in vacation as in term time. The proceedings upon such applications shall have the effect of proceedings in rem against the land, and the judgments shall operate directly on the land and vest and establish title thereto. An issue raised in such a case shall be tried at a special term of said court, in the county in which the application is filed, by the court or a referee, except that an issue of fact may be tried by a jury, in the manner prescribed by the constitution and code of civil procedure. When in any county the amount of business under this article makes it necessary or proper that such business should be attended to by one or more justices of said court assigned for that purpose, the appellate division of the judicial department in which such county is situated shall designate as many justices as may be deemed necessary, to constitute the "title part" of the special term in that court; and said appellate division shall provide by rules of practice for the conduct, in said title part, of the business coming under this article in such county. Said appellate division may assign one or more additional justices to said "title part" of the special term, or withdraw one or more justices therefrom, as the business coming under this article may require and the availability of the supreme courts justices make proper. One of the justices so assigned to the "title part" of the special term in any county shall be designated by said appellate division to

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have general supervision and control of the business coming under this article in that county; and so far as is reasonably possible, such designation shall remain unchanged, and such justice shall be retained continuously in such term and part during his term of office unless in the opinion of the appellate division a change is required for the better enforcement or working of this law. One and the same justice may be assigned so as to have such general supervision and control in two or more counties of the judicial district for which he is elected. Other duties may be assigned by such appellate division to such justice, provided that they do not interfere with his work in supervising and controlling the business coming under this article. The justice assigned, as herein provided, to have general supervision and control of the business coming under the article in any county, shall also have general supervision and control of all the official examiners within such county and it shall be his duty to observe and supervise their work as such official examiners, to advise them when necessary and to make any suggestions or recommendations to the appellate division with respect to discipline, suspension or removal of any of them as to him may seem necessary or proper in the interests of the successful operation of this law. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 3.

Judgment may be entered on the decision of a referee where the issues have been referred to him "to hear and determine." *Jamieson & Bond Co. v. Reynolds* (1915), 169 App. Div. 107, 154 N. Y. Supp. 836.

§ 372. County clerks and registers to be registrars of title.—County clerks in the several counties of the state, except the counties that may have registers, and in the latter counties the registers of said counties shall be "registrars" of titles in their respective counties. All laws relative to registers, county clerks and their deputies shall extend to registrars and their deputies, so far as the same may be applicable, except as in this article otherwise provided. Registrars of titles shall be county officers, within the meaning of the laws of this state.

Source.—L. 1908, ch. 444, § 4.

§ 373. Registrar's bond.—Every registrar, before entering upon his duties as registrar, shall give a bond with sufficient security, to be approved by a justice of the supreme court, payable to the people of the state of New York, in a penal sum the same as that for his bond as register or county clerk, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do, which bond shall be filed in the office of the secretary of state.

Source.—L. 1908, ch. 444, § 5.

§ 374. Deputy registrars' powers and duties.—In any county where the business under this article so requires, the registrar may appoint a chief

deputy and as many other deputies as are needed. But no one unless he is also a deputy register or an assistant deputy register appointed under statutory authority, or a deputy county clerk, shall be appointed as such deputy registrar unless he is an "official examiner of title" as described and required by section three hundred and seventy-seven of this chapter. Deputies may perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in case of the death of the registrar, or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar. (*Amended by L. 1909, ch. 305, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 6.

§ 375. **Compensation of registrars and deputy registrars and registration clerks.**—Where county clerks and registers are already salaried officials, the local authorities (county officials who provide for county expenses) shall fix their additional compensation as registrars, also the compensation of deputy registrars, the clerks, et cetera, needed to carry on the work under this article. Where a county clerk or a register is compensated directly by the fees paid to himself, his deputies and assistants, the fees paid to him as registrar shall take the usual course and be used to compensate deputies, clerks, et cetera, at such rates as the registrar may fix, the remainder to belong to him.

Source.—L. 1908, ch. 444, § 7.

§ 376. **Disposition and use of fees received by registrar.**—All fees received by a registrar, for the performance of the duties devolving upon him pursuant to this article, shall be disposed of in such manner as the other fees paid to county clerks and registers, with the following proviso: In those counties where registrars under this article are or shall become salaried officials, all fees paid for the registration of titles shall be kept separate by the registrars and serve, so far as they are necessary or adequate, to pay the expenses of registering titles and the other duties for which charges are made. It shall be the duty of the local authorities who provide for county expenses to provide such accommodations, help, safes, books, papers and for such other expenses as may properly be required by the registrar in the conduct of his office.

Source.—L. 1908, ch. 444, § 8.

§ 377. **Official examiners of title.**—Before application is made for the registration of a title, it must be thoroughly examined and certified by an "official examiner of title." A person duly admitted to practice as an attorney and counselor-at-law in the courts of record of this state, or a corporation duly incorporated under and by virtue of the laws of this state,

and by said laws duly authorized to guarantee or insure titles to real property in this state, and no other person, corporation, or institution, may be admitted to the office or position of, and licensed to practice as, an official examiner of title. The court of appeals shall prescribe rules providing for the methods of ascertaining the fitness of individual applicants for license to practice as such examiners, and in doing so, shall take into account the length of time during which applicants have practiced law and the amount of work that they have done in the examination of titles to real property. In the case of experienced examiners of such titles, provision may be made for licensing them, without examination, to practice as "official examiners of title." After complying with the rules and requirements prescribed by the court of appeals pursuant to this section, an individual applicant may be licensed and admitted to practice as an official examiner of title in this state, by an order of the appellate division of the supreme court of the department in which he resides, or in which he has an office for the regular practice of law. He may be required to give such a bond as the court may prescribe. A corporation may be licensed and admitted to practice as an official examiner of title by an order of the appellate division of the supreme court of the department in which it has its principal place of business, which order shall be made on the certificate of the proper state official that such corporation is duly incorporated under and by virtue of the laws of this state, and by said laws authorized to guarantee or insure titles to real property within this state.

Any official examiner of title may base the report and affidavits required by this article, upon searches and abstracts of title made by a corporation duly organized under and by virtue of the laws of this state, and by said laws duly authorized to make and to certify to searches and abstracts of title. The county clerk in any county, except in counties having a register, and in such counties the register may designate any deputy register, assistant deputy register or deputy county clerk appointed in his office under any provision of law to act as an official examiner of title in his county, or the county clerk or register may appoint one or more attorneys to act as official examiners of title in his county, provided, however, that any deputy or any other person so designated or appointed shall be an attorney and counselor-at-law and licensed to practice as an official examiner of title. The salaries of the official examiners of title designated or appointed by a county clerk or register, or their additional compensation for acting as official examiners of title beyond the salaries attaching to the office of deputy or assistant deputy, shall be fixed by the county clerk or register and shall be paid in the same manner as in the case of other employees of his office, subject to the audit of the local county or city authorities. The fees for all services rendered by such official examiner so designated or appointed by a county clerk or register shall be received by the county clerk or register and disposed of in the same manner as are other fees received by him.

In case no official examiner of title is designated or appointed in any county, the justice designated by the appellate division to have general supervision and control of the business coming under this article in that county may appoint a competent attorney to act as such official examiner of title upon such terms as may be just and determined by said justice. Any official examiner of title who is an attorney and counselor-at-law shall have power to sit as a referee and may administer oaths and examine witnesses and may at any time apply to the court for directions in any matters concerning his investigations. Said appellate division may advise, admonish, discipline, suspend or remove any official examiner, because of any dishonesty, incompetency, neglect of duty or any other improper conduct or omission, either on its own motion, or on the suggestion or recommendation of the justice of the supreme court having general supervision and control of the business coming under this law in the county in which such official examiner is appointed; and it shall be the duty of said appellate division to co-operate with such justice in endeavoring to retain the highest possible standard of ability, efficiency and honest service for all official examiners acting under and pursuant to this law.

No official examiner who has made the official examiner's report of title to be used in an action for the registration of such title shall act as attorney or counsel in such action, or be otherwise interested in such action. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 9.

§ 378. What owners may apply; what titles may be registered.—Application for registration of title may be made by the following persons:

First. The person or persons who claim, singly or collectively, to own in fee simple the legal estate in land, or in some right in or over land, and who hold and possess such land or such right.

Second. The person or persons who claim, singly or collectively, to own a contract for the purchase in fee simple of the legal estate in land, or in some right in or over land, from the owner thereof, upon the duly acknowledged consent of the owner of the fee, which consent may be incorporated in the contract. Registration in the name of the holder of the contract shall not be made, except on the production of a proper transfer of title under and pursuant to the contract from a transferrer in possession, or the consent in writing, duly acknowledged, of the proposed vendor in possession and named in the contract and his wife, if he be married. Such transfer or consent may be made after the commencement of the registration proceedings or action.

Third. The person or persons who claim, singly or collectively to have the power of appointing or disposing in fee simple of the legal estate in land, or in some right in or over land.

No title to a mortgage, lien, trust, charge or estate less than a fee simple shall be registered, unless the title to the legal estate in fee simple in the

same property is first registered. When the application is made by the holder of a contract to purchase, it shall refer to the ownership of the proposed vendor, and to the contract of purchase and sale.

It shall not be an objection to bringing real property under this article that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, trust, charge, or other lien or right. But any such lesser estate, mortgage, trust, charge, or other lien or right shall be duly noted on the certificate of title when issued. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 10.

§ 379. Contents of application for registration; other papers to be filed.—The application for registration shall be made by filing a complaint, as required by section three hundred and seventy of this chapter. Except as otherwise specified herein, the complaint (and the summons in the action) shall name as parties to the action all persons having or claiming any right or interest in or lien upon the property, or any part thereof, as shown by the examiner's report of title hereinafter described; the owners in fee simple of the surrounding contiguous properties, so far as they are known or can be reasonably ascertained by inquiry on such property; the people of the state of New York; all persons who have filed any caution or cautions against the registration of such property as provided by section three hundred and eighty-three of this chapter, and such additional parties as may be designated by the court in its order directing the issuance and service of the summons; and it shall further designate and make parties to the action all other possible owners and claimants of the property or any right or interest in or lien upon the property or any part thereof "as all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof." The complaint and summons shall have the forms and effects prescribed for them by the code of civil procedure. The complaint shall set forth, in addition to any other proper allegations:

(a) The name and post-office address of each of the plaintiffs, and when made by one acting in behalf of another, the name, place of residence and street number, if any, and post-office address and capacity of the person so acting.

(b) Whether or not each of the plaintiffs (except in case of a corporation) is married, and, if married, the name, place of residence and street number, if any, and post-office address of the husband or wife, and, if unmarried, whether he or she has been married, and if he or she has been married, when and how the marriage relation terminated, and, if the marriage was terminated by annulment or divorce, when, where and by what court the annulment or divorce was granted, and for the misconduct, if any, of which party it was granted, and the nature of the misconduct, if any, for which it was granted.

(c) That each of the plaintiffs is of the full age of twenty-one years and free from any disability, or, if he is a minor or under disability, his age or the nature of such disability, and the authority of the person by whom his application is made.

(d) The complaint shall state what claim, if any, the state of New York makes to the property in question or what interest, if any, it has therein other than the general governmental interest or such as exists as to all land in private ownership.

(e) A proper reference to the official examiner's report of title; and to the survey, map or plan of the property; each of which is to be annexed as an exhibit to the complaint, and made and declared by the complaint to be a part thereof.

(f) A statement of the estate, interest or right claimed by the plaintiff in the property sought to be registered.

(g) A prayer that the title be duly registered, as belonging to and vested in the plaintiff or plaintiffs, or as the facts may require at the time of such registration, in the manner set forth in the said report of title or otherwise; and that the court may order the issuance of the summons and service of the summons and the proper notice, as hereinafter directed, on all the defendants who do not duly appear in the action.

The court may require additional facts to be stated in the complaint, and may require the filing of any additional paper or evidence. It may also require the complaint to be amended and reverified as the circumstances of the case may demand or make proper. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 11.

Amendment of 1910 applies to pending proceedings and indicates that the Attorney-General will only be expected to intervene when the complaint has notified him of an interest on the part of the state. *Smith v. Martin* (1910), 69 Misc. 108, 124 N. Y. Supp. 1064.

, Complaint need not set out the statute; it is sufficient to plead facts which give the plaintiff the right to have his title registered. Plaintiff may allege easements in a party wall on each side of his property. *Duffy v. Shirden* (1910), 139 App. Div. 755, 124 N. Y. Supp. 529.

§ 380. **Official examiner's report of title; other evidences of title.**—The official examiner's report of the title referred to in section three hundred and seventy-nine shall accompany the complaint as an exhibit, and be made a part thereof. An individual examiner, who makes the report, shall annex thereto his affidavit that the same is true in every particular, to the best of his knowledge and belief, and that he has employed all usual means and methods for ascertaining the truth thereof, and all the facts and circumstances affecting and concerning the title to said property. A corporate official examiner, that makes the report, shall annex thereto its policy of guarantee or insurance of the title as shown by the report, for an amount to be fixed by it and the plaintiff or plaintiffs, which amount shall

not be less than the last valuation of the property or interest insured, for the purpose of local annual taxation, or its proper proportion thereof; which guarantee or insurance shall be made in favor of the plaintiff, and the people of the state of New York, and shall inure to the benefit of, and be recoverable upon, by any one who may be injured in any way within ten years after the filing of said policy of guarantee or insurance, because of any error, fraud, omission or misdescription in said report. Said official examiner's report shall set forth the exact state and condition of the title sought to be registered in the action, and the names, places of residence with street number, if any, and post-office addresses as far as known or reasonably ascertainable, and the rights or interests, or claimed rights or interests, of the plaintiff and all other persons having or claiming any rights or interests in or liens upon said property or any part thereof, and the names, places of residence with street number, if any, and post-office addresses of the owners in fee simple of the surrounding contiguous properties, as far as they are known or can be reasonably ascertained by inquiry on said properties; and, as to actual or possible owners or claimants of the property sought to be registered, not known or not found, it shall state fully what search and efforts have been made to find them. All possible owners and claimants of the property sought to be registered, or any right or interest therein or lien thereon, or in or on any part thereof, who cannot be otherwise described, shall be designated in the report, and in the summons and complaint, by the expression "all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof." By the statements of fact contained in said report of title, or by separate accompanying affidavits, or by any other additional evidence, if necessary, stating the facts, or by any or all of these, sufficient facts must be shown to satisfy the court that all owners and claimants of the property sought to be registered, or of any right or interest in or lien upon the same or any part thereof, who could be found by diligent inquiry are duly and specifically named and made parties to the action. The question of the sufficiency of the proof that all such owners and claimants who could be found by diligent inquiry are duly and specifically named and made parties to the action shall be for the court; its decision that such proof is sufficient shall be shown by its making the order for the service of the summons and the commencement of the action as prescribed in this article, and such decision or order shall not be drawn in question after six months from the time when the final judgment in the action is entered. There shall be filed, with said report of title, the abstract of title made or used by the official examiner. The examiner's report of title shall contain a short form of description of the property, the title to which is sought to be registered, which form is to be used in the notice to accompany and be served with the summons, as provided by section three hundred and eighty-six of this chapter. The court shall approve of such form before it is used in said notice and such approval shall be shown

by the making of the order for the service of the summons and notice. Said examiner's report shall contain, or be accompanied by, any other or further information that the court may prescribe. The first part of said report shall be a summary of the results thereby shown, which summary shall briefly set forth the exact state of the title to said property. Said report shall be substantially in the form set out in section four hundred and thirty-four of this chapter, with such additions or modifications the the court may order. The examiner of title may receive in evidence and may base his report upon any official search or abstract or any search or abstract issued in regular course of business by any corporation duly organized under and by virtue of the laws of this state and by said laws duly authorized to make and to certify to searches and abstracts of title or to guarantee or insure title to real property in this state. It shall be the duty of any public official forthwith to certify the returns of any search upon the requisition of any official examiner of title. Where the title to the premises sought to be registered is in whole or in part the same as that of another parcel of land title to which has been registered, reference to the earlier abstract on file in the county in which the complaint is filed may be made by the official examiner in place of duplicating the matters therein contained. Reference to official searches duly filed in the county in which the complaint is filed may be made by the official examiner in place of duplicating the matters therein contained. The papers so referred to shall have the same effect as evidence and proof in the action as said official examiner's report of title, or said searches, as the case may be. Where the complaint seeks registration of a title subject to restrictive covenants or agreements, it shall not be necessary to join as defendants those persons who have or claim rights to enforce such covenants and agreements, but unless such persons are joined as defendants the judgment of registration must direct that title be registered subject to such covenants and agreements. (*Amended by L. 1910, ch 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 12.

Application.—The provisions of this section that "the question of the sufficiency of the proof that all such owners and claimants who can be found by diligent inquiry are duly and specifically named and made parties to the action shall be for the court," and that "its decision that such proof is sufficient shall be shown by its making the order for the service of the summons and the commencement of the action as prescribed in this article, and such decision or order shall not be drawn in question after six months from the time when the final judgment in the action is entered," do not apply where plaintiff's right to registration is contested and where a final judgment in his favor is before the court for review. *Pratenfelder v. People* (1913), 157 App. Div. 462, 142 N. Y. Supp. 915, *affd.* (1914), 211 N. Y. 355, 105 N. E. 675.

Sufficiency of examiner's certificate.—An insufficient certificate of title cannot be made sufficient by prefixing a statement of the examiner's opinion that the title of the premises sought to be registered is in the plaintiff. The facts, the exact state and condition of the title, are to be set forth in the examiner's cer-

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tificate. A defendant may not put all the facts in issue by the ordinary general denial, but must specify the particular statement or statements which he intends to controvert and state what he claims the fact to be. *Barkenhien v. People* (1915), 213 N. Y. 554, 107 N. E. 1034.

Official examiners of titles are public officers, and should state no facts in their certificates and abstracts regarding the sufficiency of a title carelessly, or without proof of the accuracy of the facts stated. *Meighan v. Rohe* (1915), 166 App. Div. 175, 151 N. Y. Supp. 785, modf. (1915), 216 N. Y. 677, 110 N. E. 165.

Where the official examiner's certificate is so defective and questionable as to cast doubt and suspicion on the title of plaintiff in that though it appeared thereby that there were no conveyances passing the interest of persons once owners of the land it did not appear from said certificate that in a partition suit infant parties defendant had been duly served, the court is without jurisdiction to register the title, and a motion to vacate the original order and to set aside the summons, notice of object of action and all subsequent proceedings will be granted. *Eldert v. Cross Country R. R. Co.* (1915), 88 Misc. 684, 151 N. Y. Supp. 441.

In an action brought under said statute to register a title the court is not justified in relying on the conclusions of the official examiner but is bound to carefully and critically examine his certificate, the abstract and the accompanying affidavits and determine not only that the plaintiff appears to have a title free from reasonable doubt but that every person who might have any right or interest in the premises or lien thereon is specifically named as a party defendant. *Eldert v. Cross Country R. R. Co.* (1915), 88 Misc. 684, 151 N. Y. Supp. 441.

The findings of the official examiner in an action to register a land title are not binding upon the court. *Jamieson & Bond Co. v. Reynolds* (1916), 174 App. Div. 78, 159 N. Y. Supp. 317.

Proof of title.—When the plaintiff has complied with the statute and set forth the facts relied upon to establish his title, he cannot be put to the trouble of proving them on the trial by the original documents, records or other evidence, but the examiner's certificate of title, the abstract, searches and survey are presumptive evidence of them (§ 385), except that any party appearing at the trial may require that the ordinary rules of evidence and proof unaffected by said section apply to the matter specially controverted. *Barkenthien v. People* (1915), 213 N. Y. 554, 107 N. E. 1034.

§ 381. Survey map, or plan to be filed.—There shall be filed with the complaint and annexed thereto as an exhibit and made a part thereof, the survey, map or plan of the land referred to in section three hundred and seventy-nine of this chapter, which shall be made by a competent surveyor approved by the court, and which shall clearly show the exact boundaries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and the distance from such adjoining or neighboring streets or avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys. If any adjacent land is already registered, the survey so filed with the complaint must properly connect and harmonize with the survey of such previously registered land. There shall be attached to said survey, map, or plan, and filed with it, an affidavit of the surveyor by whom it was made, that it was made by him personally or under his immediate supervision and direction; that it is a survey, map or plan of the property described in the official examiner's report of ti-

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tle, and that according to the best of his knowledge and belief said property is included in the boundaries shown on such survey, map or plan, without any encroachments or improper erections, except as follows (stating and describing any encroachments or improper location of buildings, fences or other structures). (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 13.

§ 382. **Notice of application and of pendency of action.**—At the time when the application for registration of any property is filed, the plaintiff shall also cause to be filed a notice thereof in the office of the county clerk and registrar of each county where the property is situated, which notice shall be made and filed in the manner prescribed by section sixteen hundred and seventy of the code of civil procedure, and shall be indexed against the names of the plaintiff and all known defendants except the owners of abutting properties, and shall constitute notice of the pendency of the application, and of the action when the same is commenced, and shall be in all other respects the same as a notice of the pendency of an action under sections sixteen hundred and seventy to sixteen hundred and seventy-four inclusive of the code of civil procedure, except that, if the application be dismissed, or the action discontinued, or in any way terminated other than by registration of the title, no order for the cancellation of such notice shall be made by the court until it is duly and fully proved to the court that the provisions of section four hundred and ten of this chapter have been fully complied with and performed. The notice of pendency of action filed with the registrar, as provided in this section, shall also be noted on the “tickler certificate book” as if it were an application, and said notice shall be treated as, and take the place of, the application or complaint in all cases in which this act requires the registrar to deal with the application or complaint. In any place, however, where there is a block or lot system of indexing in use the said notice shall be indexed according to such system. The notice shall be substantially in the form provided by section three hundred and eighty-six of this chapter. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 14.

§ 383. **Filing of caution.**—Any person claiming to have any right or interest in or lien upon any real property or any part thereof the title to which has not been registered, may file with the registrar a written notice, to be styled a “caution,” that he requires written notice to be given to him of any application for the registration of the title of said real property. In such notice he shall show how he claims title, right, interest or lien, and shall give his own place of residence with street number, if any, and his post-office address, and that of a person (who may be himself or not), upon whom the notice may be served. In case of any application to register said title, service of such notice shall be made within ten days after the application is filed, by mailing said notice securely inclosed in a post-paid

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wrapper and directed to the person indicated at the place named. A like cautionary notice may be required by the owner of any land, as to the registration of the title of any or all of the land abutting upon his land, with the like proceedings in all respects. There shall be kept by the registrar a locality index of the cautionary notices, in which the same shall be indexed under the name of the street or road upon which the property referred to in the notice abuts, or if it abuts upon none, under the name of the street or road which is nearest to it. In any place, however, where there is a land map dividing the property into numbered blocks, the index shall be made by block numbers; and if any system of indexing by lot numbers is used, the index lot numbers shall be shown. Such caution shall not be notice, except in an action under this article. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 15.

An abutting owner who has filed a cautionary notice is a necessary party defendant, and must be brought in by the plaintiff even though he claims no right, interest in or lien upon the land sought to be registered. But, in the absence of such cautionary notice, he is not a necessary party. *It seems*, that where a person who has a right to appear in such action has not been named as a defendant by the plaintiff, the orderly practice is for him to enter his appearance, demand a copy of the complaint, and to answer it within the time allowed. *Sundermann v. People* (1911), 148 App. Div. 124, 132 N. Y. Supp. 68.

§ 384. Agent of nonresident applicant.—If the applicant is not a resident of the state, he shall file with his application a paper appointing an agent residing in the state, giving his name in full, place of residence with street number, if any, and post-office address, and shall therein agree that the service of any legal process, in proceedings under or growing out of the application, shall be of the same legal effect, if made on the said agent, as if made on the applicant within the state. If the agent dies, or becomes incapacitated, or removes from the state, the applicant shall forthwith make another appointment; and if he fails to do so within a reasonable time, the court may dismiss the application. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 16.

§ 385. Commencement of the action.—On the complaint and all the other papers and documents filed in the making of the application for registration, the court shall determine whether or not the plaintiff appears to have a title that should be registered. For the purpose of arriving at such determination, the court may require a further examination of the title, to be made by the examiner who made the report, or by another official examiner, and it may also require a further or amended survey, or report, or additional affidavits, or any other proper evidence or proof. In all proceedings subsequent to the determination by the court that the plaintiff appears to have a title that should be registered, the allegations and statements of the examiner's report of title, and of his abstract and

searches, and in the survey, shall be prima facie and presumptive evidence of the facts so alleged and stated, and if any defendant controverts any allegation or statement contained in said report of title, abstract, or searches, or survey, the facts controverting such allegation or statement must be specifically pleaded and set forth in the answer separate and apart from the denials and allegations answering the complaint, and except as in this section otherwise provided must be established affirmatively by the defendant pleading or setting forth the same. The court may require, at any time, any amendment or modification of said official examiner's report, or any further or amended survey or report, or any additional evidence or proof that may be necessary or proper. All the allegations and statements in said report, abstract, searches and surveys shall be taken and construed as statements of fact, unless they are expressly declared therein to be conclusions or opinions. Where a party has controverted in his pleading specifically an allegation or statement contained in said report of title, abstract, searches or survey, any party who has appeared in person, or by attorney or counsel at the trial may require that the ordinary rules of evidence and proof, unaffected by this section, shall apply to the matter so controverted.

When the court is satisfied that the plaintiff appears to have a title that should be registered, it shall make an order directing that the action to register such title be commenced by the issuance of the summons, and the service of the summons and the notice required by section three hundred and eighty-six of this chapter. It shall be the duty of the court to make such order whenever it is satisfied that the plaintiff appears to have a title which is, or after proper proceedings in the action can be made free from reasonable doubt; and otherwise it shall be its duty to refuse to make such order. No omission or defect in any order directing an action to register a title to be commenced, or in the papers or proceedings upon or in which such order is made, shall deprive the court of jurisdiction to make such order, or of jurisdiction in the action, or in any way affect the court's jurisdiction. The summons shall name as defendants the persons so named in the title of the action as set forth in the order directing the commencement of the action and shall be made and have the form, and it and said notice shall be served in the manner prescribed by the code of civil procedure for a summons in an action in the supreme court; except that, when service is directed to be made by publication, it shall be ordered to be made in only one newspaper designated by the court once a week for four successive weeks, and such service so made shall be completed at the end of twenty-eight days from and including the day of the first publication; and except further that any defendant on whom personal service is made without the state pursuant to such an order shall appear, answer, or demur within twenty-eight days after such personal service; except further that an order for service of the summons and said notice shall be a court order, and the summons served pursuant thereto need not be accompanied

by any notice except that prescribed and required by section three hundred and eighty-six of this chapter; and except further as otherwise provided herein. Before making an order for service of the summons and said notice by publication or other form of substituted service, the court must be satisfied by proof of the facts that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons. The question of the sufficiency of such proof shall be for the court; and an allegation, in an affidavit or other duly verified statement recited in said order, that the plaintiff has been or will be unable with due diligence to make personal service of the summons, or that after diligent inquiry a defendant remains unknown to the plaintiff or that the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state, or that the plaintiff cannot, with reasonable diligence, ascertain a place or places where the defendant would probably receive matter transmitted through the post-office, may be taken to be sufficient proof thereof. An order containing such a recital, and made on such proof, shall not be drawn in question after six months from the time when the final judgment in the action is entered. The summons and such notice, the complaint, the official examiner's report of title and the abstract shall be served on the people of the state of New York; and such service may be made by mailing a copy of such summons and notice together with a copy of the complaint and of the official examiner's report of title and abstract securely inclosed in a postpaid wrapper and directed to the attorney-general of the state of New York. Upon and after the issuance of the summons, the court's jurisdiction shall be the same as in an action in the supreme court in which no order for the commencement of the action is required; and the action shall be governed by, and shall proceed according to, the laws of this state and the rules of court, relative to such an action, as far as the same are not expressly abrogated or modified by this article. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 17.

Construction and application.—This section should not be so construed as to deprive a party of the right to demur to a complaint, even though he be improperly joined as a defendant. *Duffy v. Shirden* (1910), 139 App. Div. 755, 124 N. Y. Supp. 529.

Facts insufficient to justify commencement of action.—Where in an action for the registration of title to real property no persons were originally named as parties defendant, except the People of the State, and "all other persons, if any, who have any right or interest in or lien upon the property affected by this action, or any part thereof," but subsequently other parties were made defendants, who, answering, put in issue the material allegations of the complaint, and specifically pointed out various defects in the title sought to be registered, and it appeared from the official examiner's certificate that title to certain portions of the property was in persons not specifically named as defendants, and there were no facts stated justifying such omission, the court has no jurisdiction to direct the commencement of the action to register such title, or authorize the issue of the summons, and a judgment for the plaintiff should be reversed, and the proceedings dis-

missed. *City & Suburban Homes Co. v. People* (1913), 157 App. Div. 459, 142 N. Y. Supp. 924.

Where it appeared from the facts stated in the official examiner's certificate that plaintiff did not have an estate in fee simple in the property, but that several other persons had or might have some interest therein, and no facts were stated by the plaintiff respecting the existence or non-existence of such claimants or showing any effort on his part to obtain information relating to them, the court had no jurisdiction to make an order for the issuance of a summons in which such claimants were not specifically named or appropriately described. *Partenfelder v. People* (1913), 157 App. Div. 462, 142 N. Y. Supp. 915, *affd.* (1914), 211 N. Y. 355, 105 N. E. 675.

An order directing that an action to register title be commenced by the issuance and service of the summons should not be made by the court unless facts are shown to the court which at least uncontradicted and unexplained show a good title in the claimant as against all the world. Where the plaintiff rests his case upon the complaint and accompanying papers, and they do not show a title good as against all the world, the action should be dismissed upon motion of a defendant. *Held*, upon examination of plaintiff's title, that it is not entitled to registration. *Partenfelder v. People* (1914), 211 N. Y. 355, 105 N. E. 675, *affg.* (1913), 157 App. Div. 462, 142 N. Y. Supp. 915.

At the commencement of an action for the registration of the title to real property, the court is not justified in relying upon the conclusions of the official examiner, but is bound to carefully and critically examine the certificate, the abstract and the accompanying affidavits, and to see that, assuming all of the facts therein stated (as distinguished from mere conclusions, inferences and opinions) to be true, not only does the applicant appear to have a title free from reasonable doubt, but that every person who might have any right or interest therein or lien thereon is specifically named as a party defendant, if such name is known or can be ascertained. Unless this be done, the court has no jurisdiction to direct that such action shall be commenced, or to authorize the issuing or service of a summons therein. *Partenfelder v. People* (1913), 157 App. Div. 462, 142 N. Y. Supp. 915, *affd.* (1914), 211 N. Y. 355, 105 N. E. 675.

Pleadings.—The complaint in such proceeding and all other papers filed must show that the plaintiff appears to have a title that should be registered, and no registration can be made unless the court is satisfied that the title is free from reasonable doubt. The court cannot grant registration of title without proof that the title is one of the character specified in the statute and is free from reasonable doubt. And an allegation as to the nature and character of the applicant's title is essential, for what must be proved must be alleged. *Barkenthien v. People* (1913), 155 App. Div. 285, 140 N. Y. Supp. 100, *affd.* (1914), 212 N. Y. 36, 105 N. E. 808.

The complaint and the pleadings of the defendants create the issues precisely as would such pleadings in an ordinary action under the Code of Civil Procedure and those issues are triable by the tribunal named in this section "according to the laws of this state and the rules of the court," except that allegations of the complaint denied by an answer may be presumptively proven by the relevant facts stated in the certificate of title, the abstract, searches and survey. A defendant who desires or intends to controvert or contradict by proof any fact stated in those documents must by his answer deny the fact and in addition specifically allege therein the controverting facts. The plaintiff must then affirmatively establish the facts so controverted and sustain the burden of proof in accord with the ordinary rules of evidence and proof. On examination of the documents attached to the complaint, *held*, that they do not show the title in question to be in the plaintiff except through the statement of the official examiner "that the title to the

property herein described is vested in her," the force or effect of which statement or conclusion is not considered, because the answer denies it and supports its denial with controverting facts. *Barkenthien v. People* (1914), 212 N. Y. 36, 105 N. E. 808.

Where the complaint in an action for the registration of title alleges that the plaintiff's boundary line runs through the center of a party wall, the adjoining owner, although having an easement in the party wall, should not be allowed to file an answer which contains no defense based upon such ownership. *Smith v. Martin* (1910), 142 App. Div. 60, 126 N. Y. Supp. 877.

A summons in an action to register the title to certain real property, which does not contain the name of the holder of the record, title, nor the heirs of such person, if any, is insufficient. Such persons are not included in the omnibus clause of the summons and complaint under the description "all other persons, if any, having any right or interest in or lien upon the property affected by this action or any part thereof." *Sherman v. Carman* (1915), 169 App. Div. 17, 154 N. Y. Supp. 484.

Failure to name former grantee as party defendant.—It is improper to register a land title in an action brought under article 12 of the Real Property Law, where a person to whom the record title in fee was formerly conveyed is not named as a party defendant, together with those claiming under her, except by an omnibus clause in the summons directed "to all persons, if any, having any right or interest in, or lien upon, the property" affected by the action. The name of the former grantee should appear so that her heirs, or those claiming under her, can intervene and contest the action. *Belmont Powell Holding Co. v. Serial Building, Loan and Sav. Inst.* (1915), 167 App. Div. 124, 152 N. Y. Supp. 868.

Proof of chain of title.—The certificates, searches and abstracts of title of an official examiner are sufficient if satisfactory to justify the court in ordering the issuance of a summons but they are not such proof of the chain of title as is required to authorize a judgment of registration. The deeds, judgment-rolls, etc., should be offered in evidence to prove and establish the chain of title. *Voorhies v. Voorhies* (1910), 66 Misc. 78, 120 N. Y. Supp. 677.

Burden of proof.—Although this section, as amended by chapter 627 of the Laws of 1910, states that in proceedings subsequent to a determination that the plaintiff has a title which should be registered, the allegations of the examiner's certificate of title and all his abstracts and searches and the survey shall be *prima facie* evidence of the facts so alleged and state, etc., and that if any defendant controverts said facts he must specifically allege and establish affirmatively the controverting facts, etc., it does not cast upon the People of the State who have denied the plaintiff's title the burden of affirmatively disproving the same; the burden to prove title still rests upon the applicant. *Barkenthien v. People* (1913), 155 App. Div. 285, 140 N. Y. Supp. 100, *affd.* (1914), 212 N. Y. 36, 105 N. E. 808.

Right of defendant to trial of issues.—Where, in an action for the registration of title to real property no persons were originally named as parties defendant, except the People of the State of New York and "all other persons, if any, who have any right or interest in or lien upon the property affected by this action, or any part thereof," but subsequently another party was made defendant, and the complaint alleged among other things that the plaintiff was the owner in fee simple absolute of the property described by virtue of a certain deed to him, and also by adverse possession, and the defendant interposed an answer which denied the allegations of the complaint, and particularly that plaintiff was the owner in fee simple absolute, either by virtue of the deed or by adverse possession or otherwise, and specifically alleged various defects in plaintiff's title, the defendant, after a demand that the ordinary rules of evidence be applied, was entitled to a trial of

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the issues, and it was error for the court to give judgment for the plaintiff, as on a motion for judgment on the pleadings. *Partenfelder v. People* (1913), 157 App. Div. 462, 142 N. Y. Supp. 915, *affd.* (1914), 211 N. Y. 355, 105 N. E. 675.

§ 386. **Notice of object of action; copy of complaint.**—The summons, however served, shall be accompanied by a notice of object of action, which shall state the object of the action and describe briefly, but plainly, the property, the title to which is sought to be registered. Said notice shall be approved by the court, and a copy thereof shall be annexed to the order directing the service of the summons and said notice. Said notice shall be substantially as follows: "The object of this action is to register and confirm the title of (name or names and place of residence with street number, if any, and post-office address of plaintiff in full) in the following described property (description as approved by the court)." A copy of the complaint, but not of the official examiner's report of title or abstract or other papers filed with the complaint and application, may be demanded by the attorney of any defendant, and if so demanded must be served, as prescribed by the code of civil procedure. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 18.

§ 387. **Summons and notice to be posted on the land.**—A copy of the summons and notice of object of action, as above described, shall be posted in a conspicuous place on each parcel of land included in the action, at least forty days before application is made for judgment in the action. The affidavit of the person by whom such posting is made shall be proof that such notice was posted in a conspicuous place, and shall be filed with the application for the judgment or before the judgment is entered. (*Amended by L. 1910, ch. 627.*)

Source.—L. 1908, ch. 444, § 19.

§ 388. **Guardian ad litem.**—In every action to register title, the court shall make an order appointing a disinterested attorney, other than the official examiner by whom the title was examined and reported and certified, to act as guardian ad litem for all minor parties to the action and for all other parties under disability. The application for the appointment of said guardian may be made by the plaintiff *ex parte* at any time after the time to answer of such of the defendants as are served personally has expired, and the service of the summons upon such of the defendants as are not served personally within this state is complete. The guardian ad litem thus appointed upon the application of the plaintiff shall be the attorney-general of the state of New York, unless it appears to the court that the state of New York has or claims some interest adverse to that of the person or persons for whom the attorney-general would thus be appointed guardian ad litem. The question as to the existence of such adverse claim or interest shall be for the court; and an order appointing the

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attorney-general as such guardian ad litem shall be sufficient proof that no such adverse claim or interest exists. Such an order shall not be drawn in question after six months from the time when the final judgment in action is entered. It shall be the duty of any such guardian ad litem actively to ascertain and protect as far as is reasonably possible, the interests of all minor parties to the action and all other parties under disability. The compensation of such guardian shall be fifteen dollars, unless the court direct otherwise; but the attorney-general shall not receive any compensation for acting as such guardian ad litem. Any other guardian ad litem may also be appointed in the manner set forth in the code of civil procedure for any of the defendants who are infants or persons incapacitated. (*Former section repealed and new section added by L. 1910, ch. 627, and amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 20.

§ 389. Any person interested may appear and defend.—Any person interested in the property, or whose interests may be affected by the judgment in the action, whether specifically named as defendant or not, may enter his appearance and answer the complaint, within the time allowed by this article, or such further time as shall be allowed by the court, and may oppose the application for registration of the property as belonging to the plaintiff, or set up a cross-demand to have the title registered in his own behalf. In either case, he shall state particularly what his interest is and answer the material allegations of the complaint.

Source.—L. 1908, ch. 444, § 21.

Constitutionality of the act cannot be attacked by a person made defendant in an action to compel the registration of lands, merely as an owner of contiguous property, whose rights are not in any way affected. *Marvin Realty Co. v. Barre* (1910), 142 App. Div. 4, 126 N. Y. Supp. 483.

Parties defendant; abutting owner.—While an abutter, as such, is not a necessary party, all persons having an interest in the property by way of easements or otherwise are necessary parties, and so far as ascertainable should be made parties. *Hawes v. United States Trust Co.* (1911), 142 App. Div. 789, 127 N. Y. Supp. 632.

An abutting owner is not a necessary party, where he is not shown by the examiner's certificate of title to have or claim any interest or lien upon the property and he is not designated by the order of the court as a party to be served. *Duffy v. Shirden* (1910), 139 App. Div. 755, 124 N. Y. Supp. 529.

Holder of mortgage proper defendant.—In registering titles under the act it is necessary for the court to hear and determine all controversies respecting the title; hence a party alleging that he has a mortgage affecting any part of the property in question is a proper defendant in the action provided for by the statute. *Partenfelder v. People* (1914), 211 N. Y. 355, 105 N. E. 675.

The People of the State, as defendants, in actions for the registration of titles under the sections of the Real Property Law relating thereto, have the right by their pleading to oppose the right of the plaintiff to the judgment demanded and to support the pleading by corresponding proof. *Barkenthien v. People* (1914), 212 N. Y. 36, 105 N. E. 808.

Attorney-General may appear as amicus curiæ.—The People of the State of New York have an interest in seeing that imperfect titles are not registered in such

action, and hence it is both the right and the duty of the Attorney-General to appear and act as *amicus curiæ*. *Meighan v. Rohe* (1915), 166 App. Div. 175; 151 N. Y. Supp. 785, modf. (1915), 216 N. Y. 677, 110 N. E. 165.

Pleading; proof.—In an action to register title to real property the defendant cannot contradict facts in the documents annexed to the complaint unless he denies the same by answer and specifically alleges controverting facts, and this rule is binding upon the People of the State as the party to such action. *Jamieson & Bond Co. v. Reynolds* (1916), 174 App. Div. 78, 159 N. Y. Supp. 317.

Order granting leave to adjoining owner to intervene as defendant; failure of plaintiff to recognise order; notation on registration certificate referring to defendant's application to intervene; when suit to cancel notation on record does not lie.—The plaintiff brought an action to have title to real property registered, but failed to make an adjoining owner, the present defendant, a party to the action, alleging, moreover, that there was no person not a party having an interest in or claiming any right or interest in the premises. The defendant, claiming an easement in a stone retaining wall as a party wall, moved to be brought in as a defendant in the action, and an order of the Special Term denying leave to intervene was reversed by the Appellate Division and the motion granted. Upon the motion to intervene the defendant obtained an order staying the plaintiff's application for final judgment in the registration action, which stay was subsequently vacated, and, pending the defendant's appeal from his motion to intervene, the plaintiff applied to the court for final judgment without notice to the present defendant, which motion for judgment was granted and the title registered. After the order of the Appellate Division allowing the present defendant to intervene he filed the order of reversal, together with the moving papers with the registrar, and requested that a notation thereof be made on the certificate, which was done. Subsequently the plaintiff, whose title had been registered, brought the present action to require the present defendant and the registrar of the county of New York to cancel the aforesaid notations on the certificate of registration. It was *held*, that the complaint should have been dismissed; that the plaintiff should have served the complaint in the registration action upon the present defendant pursuant to his demand and notice of appearance, so that the defendant might have his day in court; that while the present defendant might have moved to vacate the judgment registering the plaintiff's title, the plaintiff, under the circumstances aforesaid, took the risk of entering a judgment which would not be binding, and that a court of equity would not expunge the notations on the certificate of title. *Hawes v. Clarke* (1913), 159 App. Div. 65, 144 N. Y. Supp. 11.

§ 390. **Title in lands vested; clouds thereon removed.**—In any action under this article, the court may find and decree in whom the title to or any right or interest in the property or any part thereof is vested, whether in the plaintiff or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust or interest, and may declare and fix the same, and may direct the registrar to register such title, right, or interest, and in case the same is subject to any lien, incumbrance, estate, trust or interest, may give directions as to the manner and order in which the same shall appear upon the certificate of title to be issued by the registrar, and generally in such an action, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this article. But no judgment of registration

of a title shall be made or entered until proof is duly made in the action by the report of an official examiner and by the certificate or receipt of the officer entitled to collect the taxes, assessments or water rents, and all taxes, water rents and assessments on the property, right or interest the title to which is so registered, have been fully paid and discharged, unless the court directs the title to be registered subject to any such tax, water rent or assessment, which said tax, water rent or assessment must then be noted on the certificate of title. Where the title to be registered is subject to restrictive covenants or agreements, and it shall appear to the court either that said restrictive covenants or agreements have been violated or that by reason of the proper parties not having been joined the court should not proceed to determine whether said restrictive covenants or agreements have or have not been violated, then in either case title may nevertheless be registered; but the judgment of registration must direct the registration to be "subject to any question as to whether covenants (specifying them) have been violated," and the certificate of title shall so note; and then the rights in respect to such covenants of any person interested therein shall not be affected by such judgment or registration. When the land the title to which is to be registered abuts upon any street, avenue, road or way the judgment of registration may provide for the registration of the applicant's interests or rights in and to such street, avenue, road or way; but if such judgment fail so to provide, then the interests or rights of the applicant in such street, avenue, road or way shall become and be parcel of or appurtenant to the property registered, and shall be included in any conveyance of or incumbrance or lien upon such registered property, unless it is expressly reserved in or excepted from such conveyance, incumbrance or lien. Such express reservation or exception shall be affected only by a clause directly reserving or excepting such interests or rights in such street, avenue, road or way and shall not be implied from the language used in any description of the registered property subsequent to the initial registration thereof. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 22.

Hearing and determination of all controversies respecting title.—In registering titles under the act it is necessary for the court to hear and determine all controversies respecting the title. *Partenfelder v. People* (1914), 211 N. Y. 355, 105 N. E. 675, affg. (1913), 157 App. Div. 462, 142 N. Y. Supp. 915.

Error for Appellate Division to dismiss complaint where record shows title in plaintiff to a portion of land.—Since in an action to register title to land, the court may decree in whom the title to, or any right or interest in the property, or any part thereof, is vested, it is error for the Appellate Division to dismiss the complaint in such an action where the trial court might find from the record that the plaintiff had a marketable title to a portion of the land, title to which is sought to be registered. *Meighan v. Rohe* (1915), 216 N. Y. 677, 110 N. E. 165, modfg. (1915), 166 App. Div. 175, 151 N. Y. Supp. 785.

An apparent cloud upon the title to real estate may be removed, in an action to register title, but a valid claim to such real estate cannot be extinguished or destroyed. *Sherman v. Carman* (1915), 169 App. Div. 17, 154 N. Y. Supp. 484.

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Judgment on decision of referee.—Although this section provides that “no judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt,” this does not mean necessarily that the court itself must determine the issues raised by the pleadings, for such section of the statute provides that the issues shall be tried by the court or a referee. Hence, where the issues in an action to register title to real property have been referred to an official referee “to hear and determine” a judgment may be entered on his decision. *Jamieson & Bond Co. v. Reynolds* (1915), 169 App. Div. 107, 154 N. Y. Supp. 836.

§ 391. Judgments and orders conclusive.—No judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt. The judgment and any order made and entered in an action under this act shall, except as herein otherwise provided, be forever binding and conclusive upon the state of New York and all persons in the world, whether mentioned and served with the summons and said notice specifically by name, or included in the description, “all other persons, if any, having any right or interest in, or lien upon, the property affected by this action, or any part thereof.” It shall not be an exception to such conclusiveness that any such person is an infant, lunatic or is under any other disability or is not yet in being. (*Amended by L. 1910, ch. 627.*)

Source.—L. 1908, ch. 444, § 23.

“The binding and conclusive character of the judgment is dependent upon the state of New York, and all persons in the world interested therein having by due process of law severally had an opportunity to be heard in determining what, if any, judgment should be entered in the action. A judgment of a court having jurisdiction of the subject-matter is of course binding and conclusive upon all persons of whom the court obtains jurisdiction. It is not binding and controlling upon others, neither is a party to an action to register a title who has or claims a right or lien upon some part of the property sought to be registered, required silently to permit judgment to be entered upon the complaint and the papers mentioned therein, if admitting all the statements therein contained judgment should not be entered thereon. If the plaintiff rests his case upon the complaint and accompanying papers and they do not show a title good as against all the world the action should be dismissed upon a defendant’s motion.” *Partenfelder v. People of State of New York* (1914), 211 N. Y. 355, 357, 105 N. E. 675.

§ 392. Fraud; action to set aside the judgment or to recover the property.—Any title registration procured by or as the result of fraud may be set aside, in the same manner and by the same proceedings as in case of a deed obtained by fraud, provided that such proceeding for setting aside the registration shall not injuriously affect the rights of an innocent purchaser or incumbrancer of the property after such registration, for value and without actual notice of the fraud, and provided further that the action or other proceeding to set aside such registration be commenced within ten years from the time when the final judgment of registration was entered. No action or proceeding shall lie or be commenced, except on the ground of fraud as above stated, to set aside any judgment

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of registration or to modify or affect the same or for the recovery of registered property or any estate, right or interest in or lien upon the same or any part thereof, or make any entry thereon, adversely to the title or interest registered therein, as directed by a final judgment of the court, unless such action or proceeding is commenced within six months after such judgment of registration is entered.

Source.—L. 1908, ch. 444, § 24.

§ 393. **Registration of title.**—Upon entering final judgment, a judgment roll must be prepared and filed in the office of the clerk, as provided by the code of civil procedure. The clerk upon payment of a fee of one dollar shall cause a copy of said judgment to be certified and transferred to the “registrar” of his county, who shall forthwith file the same in his office. After the certified copy of the final judgment directing registration of title is duly filed in the registrar’s office, the registrar shall proceed to register the title to the real property, estate, right, or interest, pursuant thereto, and issue a certificate or certificates thereof and enter the same as herein prescribed. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 25.

§ 394. **Certificate of title.**—The registrar shall make, in the form prescribed by section four hundred and thirty-five of this chapter, an original certificate of title of every title, right or interest registered by him pursuant to this article. Said certificate shall bear the date of its issue (the day and year), and be under the hand and official seal of the registrar, and be numbered in the order of its issue. Except in case of a corporation, it shall state whether the owner of the property, right, or interest registered is married or unmarried, and if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if he is under any other disability, it will state the nature of such disability. The registrar shall make proper memorials or notations on the certificate, showing in such manner as to set forth and preserve their priorities, the particulars of all the estates, mortgages, trusts, liens and charges, to which such owner’s title is subject. No such memorial or notation shall be more than one folio (one hundred words), in length; but it may refer to covenants, restrictions, trusts and forms recorded in the “book of covenants, restrictions, trusts and forms” provided for by this article. The form of the first certificate or title, as set forth in section four hundred and thirty-five of this article, shall be subject to such changes as may be required in any case. All subsequent certificates shall be in like form, except that in place of the words “first certificate,” et cetera, shall be the words “transfer from number” (the number of the next previous certificate); also the words “first registered” (date of first registration). On the back or reverse side of every certificate shall be printed, in plain legible type, the whole of section four hundred of this chapter. (*Amended by L. 1916, ch. 547.*)

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Source.—L. 1908, ch. 444, § 26.

§ 395. **Title book.**—The registrar shall keep a book or books to be known respectively as the “title book,” wherein he shall enter all first and subsequent “original” certificates of title by binding or recording them therein, with appropriate blanks for the entry of memorials and notations prescribed by this article. Said book shall be of about the size of the conveyance libers, now used in county clerks’ and registers’ offices. Each certificate shall constitute a separate leaf of such book. About two inches of each leaf on the binding edge shall be kept blank on both sides, to facilitate rebinding. At such times as may be proper, the registrar may rebind the certificates in new volumes or title books, containing respectively cancelled and uncanceled certificates. All memorials and notations, that may be entered in the title book under the terms of this article, shall be entered upon the leaf constituting the last certificate of title of the property to which they relate. Whenever the term “certificate of title” is used in this article it shall be deemed as including all memorials or notations thereupon noted. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 27.

§ 396. **Duplicate certificate of title.**—The registrar shall, at the same time that he makes out his original certificate of title, make out an exact duplicate thereof, with the memorials and notations thereon noted, which shall be delivered to the owner and shall be known as the owner’s duplicate. Any duplicate certificate, or certified copy of a certificate, shall be plainly stamped as such across its face.

Source.—L. 1908, ch. 444, § 28.

§ 397. **Owner’s receipt for certificate of title.**—For the purpose of preserving evidence of the handwriting of the owner of any registered property, right, or interest, it shall be the duty of the registrar to take from such owner, in every case where it is practicable so to do, his receipt for the certificate of title, or whatever paper shall be issued to him, signed by such owner in person. When such receipt is signed in the registrar’s office it may be witnessed by the registrar or some deputy. If signed elsewhere, it may be acknowledged before any officer authorized to take acknowledgment of deeds. When so signed and witnessed or acknowledged, such receipt shall be prima facie evidence of the genuineness of such signature.

Source.—L. 1908, ch. 444, § 29.

§ 398. **Certificate to include dealings pending registration.**—In every case of initial registration, the certificate of title shall include all dealings with the real property, and all statutory or other liens filed against the same, subsequent to the filing of the application, except when they are modified or set aside by a judgment, decree or order of the court. On and after the filing with the registrar of the notice of application for the

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registration of any real property, and until the same is registered, or the application is denied, dismissed, or discontinued, all papers which are required or permitted by this article to be filed against registered property, except the papers in the action, shall be filed with the registrar as if the property were registered. (*Amended by L. 1910, ch. 627.*)

Source.—L. 1908, ch. 444, § 30.

§ 399. **Certificate of title as evidence.**—The certificate of title, and any copy thereof duly certified under the hand and seal of the registrar and the owner's duplicate certificate, until the expiration of the time herein limited to bring an action or proceeding to set aside the judgment of registration shall be received as evidence in all the courts of the state, and in all courts and places shall be prima facie evidence that the provisions of law up to the time of issue of such certificate or duplicate, or of the time of entry of the last memorial thereon, have been complied with, and that such certificate of title has been issued in compliance with a valid judgment, and that the title to the property is as therein stated; and after the expiration of such time limited for bringing said proceedings to set aside said judgment, such certificate or copy, up to the time of its issue, shall be so received as evidence in all courts of the state, and shall be conclusive evidence of the same facts. Every memorial or notation or cancellation thereof made on any certificate or duplicate or copy thereof shall be signed by the registrar or his deputy or his duly authorized deputy or clerk. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 31.

§ 400. **Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.**—A person who receives a certificate of title pursuant to a judgment of registration, except in case of fraud to which he is a party, and a purchaser of registered real property, who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances, charges, trusts, liens and transfers, except those noted on the certificate in the registrar's office, and any of the following which may exist:

First. Liens, claims, or rights arising or existing under the laws of constitution of the United States, which the statutes of this state do not require to appear of record;

Second. Any tax, water rate, or assessment which becomes a lien on the property after initial registration and for which a sale has not been made;

Third. Any lease or agreement for a lease, made after or pending registration, for a period not exceeding one year, where there is actual occupation of the land under the lease or agreement;

Fourth. Easements or servitudes which accrue against the property after initial registration in such manner as not to require their registration.

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Except as specified in the foregoing statement of exceptions, no incumbrance, charge, trust, lien, or transfer shall take effect upon or over real property the title to which has been registered, unless the instrument creating and setting forth such incumbrance, charge, trust, lien, or transfer has been filed with the registrar and a memorial or notation thereof made upon the certificate of title covering the property. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 32.

§ 401. **Registered property not affected by prescription or adverse possession.**—No title to registered real property, in derogation of that of the registered owner, shall be acquired by prescription or adverse possession.

Source.—L. 1908, ch. 444, § 33.

§ 402. **Fraud; notice only by registration.**—Except in case of fraud and except also as herein otherwise provided, no person taking a transfer of any registered real property or of any estate or interest therein or lien or charge thereon from the registered owner shall be required to inquire into the circumstances under which, or the consideration for which such owner or any previously registered owner had the title registered, nor shall such transferee be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest whatever; and the knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed or treated as fraud.

Source.—L. 1908, ch. 444, § 34.

§ 403. **Memorial to be carried forward.**—Whenever a memorial or notation has been entered as permitted by this article, the registrar shall carry the same forward upon all certificates of title until the same is canceled in some manner authorized by this article.

Source.—L. 1908, ch. 444, § 35.

§ 404. **Registered property to remain registered.**—The bringing of property under this article shall imply an agreement, running with the land and binding upon the applicant and all his successors in interest or title, that the property shall be subject to the terms of this article, and all amendments and alterations thereof, and all dealings with the property so registered, or any estate, right or interest therein, after the same has been brought under this article, and all liens, incumbrances and charges upon the same after the first registration thereof shall be subject to the terms of this article. (*Former section repealed and new section added by L. 1910, ch. 627, and amended L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 36.

§ 405. **Registered property subject to same rights and burdens as unregistered property.**—Registered real property and every estate, right and interest therein shall be in all respects subject to the same rights, burdens

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and incidents as unregistered real property, except as otherwise expressly provided in this article or any amendment thereof.

Source.—L. 1908, ch. 444, § 37.

§ 406. **Transfers of registered property.**—A registered owner of real property, in order to transfer his whole estate or interest therein or any part or parcel thereof, or any undivided interest therein shall execute to the intended transferee a deed or instrument of conveyance in any form authorized by law. Upon filing such deed or other instrument in the registrar's office and surrendering to the registrar the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the transfer the registrar shall enter such statement as a memorial upon the proper original certificate, provided that such statement is not more than one folio (one hundred words) in length. He shall then make out and register as herein provided a new certificate and also an owner's duplicate certifying the title to the estate or interest in the property conveyed to the transferee and shall enter upon the original and duplicate certificate the date of the transfer, the name of the transferee and the number of the new certificate, and shall stamp across the original and surrendered duplicate certificates the word "cancelled." If the parties in interest fail to agree upon the statement to be entered upon the certificates, the registrar shall refuse to make the transfer until directed by the court as herein provided. Title to such property shall not pass by such transfer until the transfer is registered as prescribed by this section. Any instrument of transfer or mortgage of an estate in fee simple in registered property shall contain an express statement, after the description of the grantor or grantors, mortgagor or mortgagors, as to whether or not such party or parties are married or unmarried; and no instrument of transfer or mortgage which does not contain such statement shall be registered. (*Amended by L. 1910, ch. 627.*)

Source.—L. 1908, ch. 444, § 38.

§ 407. **Certificate as to part of property remaining after transfer.**—When only a part of the property described in a certificate is transferred, or some estate or interest therein is to remain the transferrer's, a new certificate shall be issued for such part, estate or interest so remaining and belonging to him; or if the property is so described as to permit it, the property transferred may be cancelled on the certificate of the transferrer without the issue of a new certificate for the residue. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 39.

§ 408. **Book of covenants, restrictions, trusts and forms.**—Each registrar shall provide a book to be known as the book of covenants, restrictions, trusts and forms. This book shall be bound in a substantial manner and

the pages thereof shall be Crane's parchment paper or its equal. Any person may have recorded in this book any covenant, restriction, trust or form he may present for that purpose on payment to the registrar at the rate of fifty cents per folio. The covenant, restriction, trust and form so entered shall be numbered consecutively and shall be written or typewritten in the book with India ink or other permanent ink in a clear and legible manner under the number given to it. References in any documents issued by the registrar to any covenant, restriction, trust or form recorded in this manner shall be as follows:

Subject to restriction (or covenant, trust or form) recorded under number.....in the book of covenants, restrictions, trusts and forms, in the registrar's office of this county. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 40.

§ 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.—Every paper filed with the registrar shall be given a serial number in the order of its filing, and then shall be entered by the registrar in an "entry book" under columns showing:

First. The serial number;

Second. Day of filing;

Third. Filing number of application (complaint) to which it relates if the registration proceedings are still pending;

Fourth. Certificate number, if registration proceedings are completed and certificate has been issued;

Fifth. Kind of paper filed;

Sixth. Name, place of residence with street number, if any, and post-office address of the person in whose interest the paper is filed.

Every paper filed with the registrar affecting property for which registration proceedings are pending shall be kept by the registrar with the application. The registrar shall provide a book to be known as "the tickler certificate book" wherein he shall note all filed papers affecting property for which registration proceedings are pending. Each page shall constitute a separate tickler certificate, and on said certificate he shall enter the character of the paper, the date of filing and the filing number. The tickler certificate, subject to such change as the case may require, shall be substantially as follows:

Application number.....

This certifies that the following papers have been filed in the office of the registrar of county affecting, or in connection with an action to register the title to the following described real property, to wit:

(The description to appear here.)

Character of paper	When filed	Filing number

A memorial of every paper filed with the registrar affecting title to registered property shall be entered at once upon the last original certificate to which it relates. Every paper filed with the registrar affecting the title to property shall be indexed from its contents as follows: In an index showing in alphabetical order in one column or in a set of columns the names, places of residence with street numbers, if any, and post-office addresses of all persons in whose interest applications for registration of title are filed; the names, places of residence with street numbers, if any, and post-office addresses of all persons to whom any interest, right, or power in real property is granted or released; and the names, places of residence with street numbers, if any, and post-office addresses of all persons claiming an interest in real property; also, in separate columns the kinds of papers filed, the numbers of the filed papers, the dates of filing, the filing numbers of application to which they relate (if application is pending) and the numbers of the last original certificate to which they relate (if the title to the property is registered). Whenever a judgment or an order of court directs that the title to real property be registered, it shall also direct the registrar to transfer all proper liens and incumbrances filed against the property pending registration to the certificate of title so to be issued. In those counties which have block indexes, an index shall be kept by blocks of all owners of registered property with a reference to the certificate numbers in which the properties are registered. The registrar shall also keep an index of all properties registered under this article in which such registered properties shall be indexed according to a brief description thereof. In any place, however, where there is an official land map showing a division into blocks, such index shall be made according to block numbers; and if a system of indexing by lot numbers is used, the index lot numbers shall be shown. Such index shall also give the number of the certificate of title of such properties. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 41.

§ 410. Notice of filed papers.—All papers filed by the registrar, and indexed and entered by him pursuant to this article, shall be of equal effect as to notice, in the order of their filing as shown by their filing numbers, as are similar papers when recorded by county clerks or registers under the recording acts. Should an action for registration be discontinued or otherwise terminated without registration, an order of court to that effect shall be filed with the registrar, who shall at once cause all the papers relating to the title to the property affected, filed with him, except the notice of application and said order, to be recorded or filed, and indexed, by the county clerk or register (as the case requires) in the order of their filing, on payment of the statutory fees. (*Amended by L. 1910, ch. 627.*)

Source.—L. 1908, ch. 444, § 42.

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§ 411. **Addresses of interested parties; notice.**—On every paper or instrument filed with the registrar there shall be indorsed the name, place of residence with street number, if any, and post-office address of the person in whose behalf it is filed. The address may be changed from time to time, by such person filing with the registrar a written notice of such change. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 43.

§ 412. **When a transfer is deemed to be registered.**—Every transfer of registered property shall be deemed to be registered under this article when the new certificate to the transferee shall have been entered as in the case of first registration; and all other dealings shall be considered as registered when the memorial or notation shall have been entered in the title book upon the last certificate of title to the property. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 44.

§ 413. **New certificates of title.**—Upon the application of any owner of registered property held under one or more certificates of title and delivering up of such certificate or certificates, the registrar shall issue to such owner, at his option, separate certificates, each for a portion of such property in accordance with such application; and upon issuing any such certificate of title, said registrar shall indorse on the last previous certificate of such property so delivered up a memorial setting forth the occasion of the cancellation thereof and referring to the number or numbers of the new certificates of title so issued. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 45.

§ 414. **Loss of owner's duplicate.**—If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate.

Source.—L. 1908, ch. 444, § 46.

§ 415. **Mortgages, leases and other liens and charges; may be registered.**—Any mortgage, lease for a term of over one year, contract to sell or other instrument intended to create a lien, incumbrance, trust or charge on registered property or any right or interest therein, may be registered as herein provided.

Source.—L. 1908, ch. 444, § 47.

§ 416. **Proceedings to register mortgage, lease or other lien or charge.**—On the filing of the instrument in the registrar's office and the production

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of the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the mortgage, lease or other lien or charge, the registrar shall enter such statement upon the proper certificate in the title book, provided such statement be not more than one folio (one hundred words) in length, and also he shall enter upon the owner's certificate a memorial thereof and the date of filing the instrument with a reference to its file number, which memorial shall be signed by the registrar who shall deliver to the person filing such instrument a certified copy of such instrument certified to be the "registration copy." The registrar shall also note upon the instrument filed the number of the certificate on which the memorial is entered. If the parties in interest fail to agree upon the memorial so to be made by the registrar, he shall refuse to make any memorial thereof until directed by the court to do so, as herein provided. Any mortgage registered pursuant to this section shall be subject to the provisions of article eleven of the tax law (being chapter sixty-two of the laws of nineteen hundred and nine), and amendments thereof in the same manner as if said mortgage were recorded, as provided by section two hundred and fifty-three of said tax law. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 48.

§ 417. **Judgments, decrees, attachments and other liens to be noted on certificate.**—No judgement, decree, attachment, execution, mechanic's lien, or other lien or charge, which may affect or be a lien or charge upon real property in this state, shall be or become a lien or charge on real property, or any right or interest therein, the title to which has been registered, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other lien or charge, shall be duly filed with the registrar, and a proper memorial thereof made by him upon the certificate of title in the title book. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or stamped thereon the number of the certificate of registration of the title to the property to be affected and bound thereby by virtue of such memorial on such certificate, and it shall be the duty of the registrar to make such memorial immediately on receipt of the same. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's lien, or other lien or charge, so noted on the certificate, shall not affect or be binding upon the registered property, right, or interest, unless on like evidence a memorial thereof shall be made by the registrar on such certificate. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 49.

§ 418. **Assignment of mortgage, lease, or other lien or charge.**—The holder of any mortgage, lease, or other lien or charge on registered property, in order to transfer the same or any part thereof, shall execute an

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assignment of the whole or any part thereof; and upon such assignment being filed in the office of the registrar, and the production of the registration copy of the instrument, if any, which created the mortgage, lease or other lien or charge and which is held by the assignor, the registrar shall enter in the title book a memorial of such transfer with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the registration copy thereof produced, the number of the certificate on which the memorial is entered, with the date of the entry. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 50.

§ 419. Release, discharge or surrender of charge or incumbrance.—A release, discharge or surrender of a charge or incumbrance, or any part thereof, or of any part of the property charged or incumbered, may be effected in the same way as is above provided in the case of a transfer. In case only a part of the charge or only a part of the property charged is to be released, discharged or surrendered, the entry shall be made accordingly, but when the whole is released, discharged or surrendered, the registrar shall plainly stamp across the instrument on file, and on the memorial thereof, and on the registration copy produced, the word "cancelled," and shall sign the same. Any tax, water rent or assessment, subject to which the title has been registered and which has been noted on the certificate of title as provided in section three hundred and ninety of this chapter, may be released and discharged in the same way upon a receipt therefor being issued and duly certified by the receiver of taxes or collector of assessments and arrears or other duly authorized officer, as the case may require, and delivered to the registrar and filed in his office. The receiver of taxes or collector of assessments and arrears or such other duly authorized officer, as the case may require, upon demand of any owner of registered property, shall execute, certify and deliver to such owner such receipt when any such tax, water rent or assessment has been paid upon such registered property. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 51.

§ 420. Enforcement of mortgages, charges, liens and incumbrances.—All charges, liens and incumbrances on registered property, or on any estate, right or interest in the same, and all rights therein may be enforced as now allowed by law; and all laws with reference to the foreclosure, release or satisfaction of mortgages shall apply to mortgages on registered property or on any estate, right or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce such mortgage, charge, lien or incumbrance is filed in the registrar's office and a memorial thereof entered on the certificate in the registration book, the pendency of such suit shall not be notice to the registrar or to any person dealing with the property or any right or interest therein.

Source.—L. 1908, ch. 444, § 52.

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§ 420-a. **Registration under judicial sales.**—Where a judgment or order in any action or proceeding directs or authorizes a sale of real property, the title to which is then a registered title, the officer appointed to conduct such sale shall be a person who is a duly qualified official examiner of titles, pursuant to the provisions of this article. It shall be the duty of such officer, prior to the date fixed by him for the sale of such property, to examine the title thereto in so far as it is affected by the action or proceeding in which such officer is appointed, and to prepare a report thereon, verified by him, stating his approval of such title or his objections thereto. At least one week prior to the day fixed for such sale, such officer shall serve a copy of such report on the attorney for the plaintiff, petitioner or applicant in such action or proceeding. Another copy of such report shall be delivered by such officer to the purchaser on such sale. If in such report such officer approve such title, then unless ten days before the date fixed by the terms of sale for the delivery of the deed the purchaser shall file with the clerk of the court directing such sale a notice that he intends to refuse to complete his purchase of such property, the officer shall apply forthwith to such court, without notice, for an order confirming such sale, and giving such directions to the registrar as may be necessary to enable such registrar to issue a due and proper certificate of title to the purchaser. Upon such application, the officer must submit to the court, to be filed with such order, the original of such report together with proof of service thereof upon such attorney and upon such purchaser, and also his proposed deed for the court's approval; and such approval if obtained shall be noted upon such deed by the court. The fees of such officer as now fixed by law shall be held to be full compensation to such officer, and no extra fees shall be allowed him for his services as official examiner under this section. The registrar upon production of a certified copy of the order approving the report of such officer and upon receiving the deed thus approved by the court, shall register the title in accordance with such order. (*Added by L. 1916, ch. 547.*)

§ 421. **Powers of attorney to be filed and registered.**—Before any person can convey, charge, incumber or otherwise deal with any registered property; or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar and a memorial thereof shall be entered upon the certificate in the title book, in like manner as in the case of a charge or incumbrance. A revocation of such power of attorney may be registered in like manner as such power of attorney was registered. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 53.

§ 422. **Reference of doubtful matters to the court.**—When the registrar is in doubt, and the parties in interest fail to agree as to the proper memorial to be made in the title book of any deed, mortgage or other volun-

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tary instrument presented for registration, the questions shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in interest; and the court, after due notice to all parties in interest, and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly. In any judicial proceeding affecting property, the title to which is then a registered title, the court upon the application in writing of any party or parties in interest after due notice to all other parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of any memorial that should be made by the registrar in the title book because or as the result of such proceeding; and the registrar, upon the production of a certified copy of such order, shall make the proper memorial in accordance with such order. After making such memorial in the title book the registrar shall also make all other memorials on existing certificates or make and deliver any new certificates according to the circumstances and in the manner required herein. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 54.

§ 423. **Death of owner of registered property; transfer of property.**—Upon the death of an owner of registered real property or any estate, right, or interest therein, his heirs-at-law or devisees, at any time after the due entry of a decree of the surrogate's court, probating his will and granting letters testamentary thereon or granting letters of administration, or in case of an appeal from such decree at any time after the entry of a final decree, may make application to the court for an order directing the registrar in what manner the title shall be registered, and in whose name or names it shall be registered; and as to the new certificate or certificates to be issued thereon. Two or more heirs or devisees may unite in one such application. On such application the court, after due notice to all parties in interest and a hearing, if necessary or proper, may enter an order in accordance with said application. On such application the certificate of title of the deceased owner, or a duplicate copy thereof, shall be sufficient and conclusive evidence of his title at the time of his death, and no other evidence of the title up to that time may be produced. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 55.

§ 424. **Certificate of title during settlement of estate.**—Any new certificate of title, made and entered as prescribed in the preceding section before the final settlement in the surrogate's court of the personal estate of the deceased owner of the real property, shall state expressly that it is made and entered because of transfer of the title from the last certificate by descent or devise, and that such personal estate is in process of settlement. After the final settlement of such personal estate in the surrogate's

court, or after the expiration of the time allowed by the code of civil procedure for bringing a proceeding for selling, mortgaging or leasing the real property of the deceased owner for the payment of his debts, the heirs-at-law or devisees may apply to the court in the registration action for an order directing the cancellation of said memorial upon the certificate, which memorial showed that the personal estate was in the course of settlement, and the court, after being satisfied by due proof that said personal estate is completely settled or that said time to apply for selling, mortgaging or leasing the said real property has expired, shall make an order directing the cancellation of said memorial; but the liability of heirs or devisees of registered property, or of such property itself, for claims against the deceased or his estate shall not be in any way diminished or changed by this article. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 56.

§ 425. Title derived through execution of a power in a will.—When the will of a deceased registered owner of real property, or of any estate, right or interest therein, empowers the executor or executors to sell, incumber or otherwise deal with such property, estate, right or interest, it shall not be necessary for such executor or executors to be registered as the owner or owners thereof; but any person who acquires title through or by virtue of the execution of such power may have such title registered, by proceeding in the same manner as heirs or devisees of a deceased registered owner of real property, as directed and provided by this article.

Source.—L. 1908, ch. 444, § 57.

§ 426. Assurance fund.—Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof which value shall be determined by the registrar but shall not be less than the amount of the last assessment for local taxation. All moneys received by the registrar under the provisions of this section shall be paid to the treasurer of the county (in New York city to the city chamberlain), as an assurance fund for land registered in his county and shall be treated in the same manner as are other funds received for local taxation or for the reduction of the county or city debt. Said treasurer (or city chamberlain) shall keep a separate account of such funds and report annually thereon as required by law in reference to other funds in his hands. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 58.

§ 427. Compensation from assurance fund.—Any person who, without negligence on his part, sustains loss or damage or is deprived of real property, or of any estate, right or interest therein because of the registration of another person as owner of such property, or of any estate, right, or interest therein, through fraud, or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or me-

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morial in the title book, shall have a cause of action against the county treasurer (in New York city the city chamberlain) to recover compensation for such loss or damage. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 59.

§ 428. **Action against assurance fund.**—Any allowed claim for indemnity shall be paid in the same manner as other claims against the county. In the city of New York a claim shall be passed upon and approved by the registrar and by the corporation counsel of the city before payment is allowed. The rejection of a claim by the proper county officials (or in the city of New York by the registrar and corporation counsel) shall not preclude the claimant from bringing an action to recover such claim. No claim or judgment on a claim for indemnity shall be binding on the county or on the county treasurer (in New York city the city chamberlain) for an amount exceeding the amount credited to the assurance fund. If the amount credited to the assurance fund is insufficient to pay the claim or judgment in full, the unpaid balance shall bear interest at the legal rate and shall be paid out of the first moneys coming into said assurance fund. If any right of action against any person for damages for negligence or other cause, or under any covenant or contract of warranty or guaranty or otherwise, exists in favor of the person to whom indemnity is paid, the county treasurer (in New York city the city chamberlain) shall be deemed to be subrogated to such right and may bring an action to recover thereunder. Any amounts recovered by the county treasurer (in New York city the city chamberlain) under such an action shall be credited to the account of the assurance fund. Until the assurance fund provided as aforesaid shall have been exhausted, payment for any such losses or damages shall be made out of such fund. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 60.

§ 429. **Restrictions on claims against assurance fund.**—No person shall recover from the assurance fund any greater sum than the fair market value of the property at the time the right to bring such action first accrued. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to begin the same accrued, and not afterward, and such time shall not be extended because of any disability. (*Amended by L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 61.

§ 430. **Penalties for fraudulent acts or false certificates.**—Whoever fraudulently procures or assists in fraudulently procuring, or is intentionally privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the registration or other book kept in the registrar's office, or of any erasure or alteration in any entry in said book, or in any instrument authorized by this act, or knowingly defrauds, or is intentionally privy to defrauding any person by means of a false or fraudu-

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lent instrument, certificate, statement or affidavit, affecting registered land, shall be guilty of a felony and shall be punished by a fine of not exceeding five thousand dollars, or imprisonment for a period not exceeding five years, or both, in the discretion of the court.

Source.—L. 1908, ch. 444, § 62.

§ 431. **Forgery and fraudulent stamping; penalty.**—Whoever forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, handwriting of any officer of the registrar's office; or fraudulently stamps or procures to be stamped, or assists in stamping, any document with any forged seal of said registrar, or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person, or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged, or swears falsely concerning any matter or proceeding made or done in pursuance of this article, shall be guilty of a felony, and shall be punished by imprisonment in the penitentiary for a period not exceeding five years, or by a fine not exceeding five thousand dollars, or both, in the discretion of the court.

Source.—L. 1908, ch. 444, § 63.

§ 432. **Fees to be charged.**—The following fees shall be charged by registrars for the various services performed pursuant to this article:

(a) Filing the notice of application, including entering it in the entry-book, indexing it, and entering it in the tickler certificate book, one dollar.

(b) Filing and indexing the judgment and issuing certificates of title in accordance therewith, and indexing same, five dollars.

(c) Entering, filing and indexing any lien, incumbrance or charge pending registration or subsequent thereto, one dollar.

(d) Entering, filing and indexing a deed or other paper requiring the cancellation of one certificate and the issue of another—for each new certificate issued, two dollars.

(e) Entering, filing and indexing any instrument cancelling any lien or incumbrance on a certificate, fifty cents.

(f) Making any additional certificate, fifty cents.

(g) Entering, filing and indexing a caution, one dollar.

(h) Services of the official examiner of title, when appointed by a register or county clerk, or by the court, one-tenth of one per centum of the value of the property, and ten dollars in addition thereto.

(i) Making, certifying and delivering a "registration copy" of any instrument, as provided by section four hundred and sixteen hereof, a fee computed at the same rate as the fees allowed by law for certifying a copy of a deed.

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(j) Furnishing printed forms or for any services for which fees are not herein specified such reasonable charge as may be fixed by the registrar subject to the revision of the court. (*Amended by L. 1910, ch. 627, and L. 1916, ch. 547.*)

Source.—L. 1908, ch. 444, § 64.

§ 433. **Construction of article.**—This article shall be construed liberally, so far as may be necessary for the purpose of effecting its general intent.

Source.—L. 1908, ch. 444, § 65.

§ 434. **Form for official examiner's report of title.**—The examiner's report of title shall be substantially in the following form with such additions or modifications as may be necessary by reason of laws concerning records affecting the particular locality in which the property is situate and with such additions or modifications as the court may require or deem proper.

OFFICIAL EXAMINER'S REPORT OF TITLE.

State of New York, }
County of } day of, 19 ..

..... reports and certifies that title to the property herein described in this report is vested in
..... clear of all liens, incumbrances, defects, rights and interests, except as below noted. A full statement has been made of all liens, incumbrances, defects, rights and interests including restrictions, special agreements, covenants, easements, taxes, surveys, judgments, mortgages, and encroachments as they arise in the order of this report, which statement is found in the following pages of this schedule. A brief summary statement of the same is as follows (such summary to be here set out in the order of the paragraphs of this report):

The names and post-office addresses of all persons interested, or claiming to have any rights or interests in said property and the nature of their interests are as follows:

Names.	Post-office address.	Nature of interest.
.....
.....
.....

The names of the other persons interested, or claiming to have any rights or interests, in said property whose post-office addresses and whereabouts are unknown and cannot by diligent inquiry be ascertained are as follows:

Names.	Nature of interest.
.....
.....

The facts as to the inquiries and efforts made to find other persons having

any rights or interests in said property and the diligence used to ascertain whether or not those known can be served personally with a summons within the state, are set forth in the following detailed statement:

DETAILED STATEMENTS.

1. Description. The following is an accurate diagram of the property proposed for registration in this action, the same having been copied from a survey made by date

The above property is more particularly bounded and described as follows:
.....
.....

2. Records examined. Records necessary to determine the ownership of the above-described property and all liens and incumbrances have been examined in the offices of the register; clerk of the United States circuit court of the district; clerk of the United States district court of the district; United States loan commissioners; county clerk; tax collector; comptroller; county treasurer and (state here the other offices in which search has been made in addition to the above). The results of the examination of the records of the various offices above described are herewith set forth in detail separately. In case it has been found impossible to get necessary information to complete this certificate in any respect, a detailed statement has been given showing what efforts have been made.

3. Register's (or county clerk's) office. Search has been made against the following persons for the periods set opposite their respective names, for all conveyances, mortgages unsatisfied of record, assignments of unsatisfied mortgages returned hereon, leases and other instruments of record affecting said premises
.....
.....

A chain of title is given below. It also shows all agreements and instruments of record affecting said property. The special covenants and restrictions, unsatisfied mortgages and agreements appearing in said chain are set forth in detail after said chain of title together with all liens, incumbrances and defects in the register's (or county clerk's) office. (Here set forth chain of title, et cetera, as above.)

PARTICULARS OF EACH MORTGAGE UNSATISFIED.

Mortgagor,
Mortgagee,
Amount,
Dated,
Recorded,
Liber,; Page,; Sect.,; Block,

(Here set forth all assignments of said mortgage; also any objections to or defects in such assignments.)

4. United States circuit and district courts. Search has been made in the United States circuit and district courts of the district for judgments and decrees as follows:

Names.	From.	To.
--------	-------	-----

Upon such search the following unsatisfied judgments appear:

.....

Search has also been made in the United States district court of the district against all the names appearing in the register's (or county clerk's) search above for petitions in bankruptcy for the same periods as shown in register's (or county clerk's) search above so far as said periods fall within the times during which the bankruptcy acts of eighteen hundred and forty-one, eighteen hundred and sixty-seven and eighteen hundred and ninety-eight were in force.

Upon said search the following petitions appear:

.....

5. Mortgages to the United States loan commissioners. Search has been made for such mortgages against all the names appearing in the register's (or county clerk's) search and for the same periods. Upon such search the following unsatisfied mortgages appear:

.....

6. County clerk's office. Search has been made in this office for judgments, decrees and transcripts of judgments and decrees against the following names for the following periods:

Names.	From.	To.
--------	-------	-----

.....

Upon such search the following unsatisfied judgments are returned, the marginal notes showing what disposition has been made of them by the examiner:

.....

Search has been made in this office for years last past for mechanics' liens affecting said premises. Upon such search the following unsatisfied mechanics' liens appear:

.....

A search has been made against the persons named in the search in paragraph two and for the same periods for notices of lis pendens; certificates of sheriff's and marshal's sales; insolvent assignments; general assignments; foreclosure by advertisements; appointment of receivers; appoint-

ment of trustees, of absconding concealed nonresident or imprisoned debtors; exemptions under the homestead act. A further search for sheriff's certificates has been made against each owner for a period of eleven years subsequent to the search in the register's office and for foreclosure by advertisement to date. Such instruments and notices have been discovered as follows, the marginal notes showing what disposition has been made of them by the examiner:

7. Search has been made for one year last past in the register's (or county clerk's) office for chattel mortgages and conditional bills of sale affecting the premises. Upon such search the following unsatisfied mortgages and conditional bills of sale appear

8. Tax offices. Taxes, assessments and water rates unpaid are as follows:

Year.	Amount.
.....
.....

(State in detail all offices, local or otherwise, in which records of taxes, assessments or water rates are kept, in which searches have been made.)

Sales for taxes, assessments and water rates have been had as follows:
(State in detail offices in which searches have been made.)

To.	Date.
.....
.....

9. Here insert detailed statement of all searches for liens or incumbrances other than those above set forth

10. Other interested persons. The following persons who do not reside on the premises claim interests or rights in said property, the nature of their claim in law or equity being herewith set forth in detail:

Name.	Address.	Nature of claim.
.....
.....

The names and post-office addresses of the owners of the adjoining parcels of land are, as far as reasonably obtainable by inquiry on the premises, given below as shown in the diagram:

11. Inspection of property. An inspections of the premises shows the

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property is occupied by the persons whose names and post-office addresses are set forth below; said occupants having described their interests and claims in said premises as follows:

Names.	Post-office address.	Nature of claim.
.....		
.....		
An inspection of the plumbing, drains and sewers shows the following easements:		
.....		
.....		

An inspection of the walls, halls, roofs, yards and fire-escapes shows easements as follows:

.....

.....

12. Other matters which may or may not be of public record not included above and affecting said title are set forth as follows:

State of New York, }
 County of, } ss.:

being duly sworn, deposes and says that he is a duly qualified official examiner of title, licensed to practice as such under and by virtue of the laws of the state of New York; that he has personally examined the title to the property described in the foregoing report, and has made the foregoing report, and that the statements contained in said report are true in every particular to the best of his knowledge and belief; and that he has employed all usual means and methods for ascertaining the truth thereof and of all the facts and circumstances affecting and concerning the title to said property.

.....

Sworn to before me, this
 day of, 19..

.....

(Former section repealed and new section added by L. 1910, ch. 627, and amended by L. 1916, ch. 547.)

Source.—L. 1908, ch. 444, Schedule A.

§ 435. Form for certificate of title.—The registrar's certificate title shall be in the following form:

No. First registered

CERTIFICATE OF TITLE.

(First Certificate) or (Transfer from No.)

.....

State of New York, }
 County, } ss.:

.....

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of (residence, and if a minor give his age; if under other disability, state the nature of the disability); married to (name of husband or wife, or if not married, say not married); is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)

Witness my hand and official seal this (date).

(Seal)

.....,

Registrar.

MEMORIALS.

of estates, easements and charges on the land described in the above certificate of title.

Document number	Kind	Running in favor of	Terms	Date of registration	Signature of registrar

(Amended by L. 1916, ch. 547.)

Source.—L. 1908, ch. 444, Schedule B.

ARTICLE XIII.

CEMETERY LANDS.

Section 450. Lands used for cemetery purposes not to be sold or mortgaged.

451. Acquisition of land for cemetery purposes in certain counties.

§ 450. Lands used for cemetery purposes not to be sold or mortgaged.—No land actually used and occupied for cemetery purposes shall be sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and * collectable out of the same. The provisions of this section shall not apply to any lands held by the city of Rochester.

Source.—L. 1879, ch. 310, §§ 1, 2, 3.

Application and construction.—While the section provides that assessments shall take effect when the lands are no longer used for cemetery purposes, it author-

* So in original.

§§ 451, 460, 461.

Laws repealed.

L. 1909, ch. 52.

izes no valid assessment *in present* and provides for no method by which an assessment may properly be made when a change in the use of land deprives it of the exemption. It seems impossible to harmonize these provisions with the balance of the section. Lands actually used and occupied for cemetery purposes are exempt from assessment and taxation for local improvements as well as for purposes of general taxation. *Matter of City of N. Y. (Jerome Ave.)* (1908), 192 N. Y. 459, 85 N. E. 755, modfg. (1907), 120 App. Div. 201, 105 N. Y. Supp. 319.

Cemetery association liable for assessment for local purposes in village.—In view of section 113 of the Village Law a cemetery located in a village is liable for an assessment for a sidewalk constructed along its grounds by the village authorities. Even if the sale of the land used for cemetery purposes could not be sold under this section for the collection of the assessment, the village may at least recover a judgment which shall be enforceable out of the personal property of the cemetery corporation or out of its lands not actually used and occupied for cemetery purposes, and which shall be a lien upon the lands actually used for cemetery purposes if at any time they cease to be so used. *Gouverneur Village v. Gouverneur Cemetery Assn.* (1909), 136 App. Div. 37, 120 N. Y. Supp. 221, revg. (1909), 62 Misc. 534, 116 N. Y. Supp. 1107.

§ 451. **Acquisition of lands for cemetery purposes in certain counties.**—It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Richmond, Rockland, Suffolk or Nassau for cemetery purposes without the consent of the board of supervisors for such county, or of the board of aldermen of the city of New York, as the case may be, first had and obtained in like manner as provided for in the membership corporations law; and said board of supervisors or board of aldermen in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require. (*Added by L. 1909, ch. 274 and amended by L. 1912, ch. 300, in effect Apr. 13, 1912.*)

ARTICLE XIV.

LAWS REPEALED; CONSTRUCTION; WHEN TO TAKE EFFECT.

Section 460. Laws repealed.

461. Construction.

462. When to take effect.

§ 460. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 300.

§ 461. **Construction.**—This chapter does not alter or impair any vested estate, interest or right, or alter or affect the construction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 1; originally revised from R. S., pt. 2, ch. 1, tit. 5, §§ 10, 11.

L. 1909, ch. 52.

Laws repealed.

§ 462.

Consolidators' note.—This matter has been transferred from former § 1 to its appropriate place in the chapter in accordance with the arrangement of matter followed in the consolidated laws.

§ 462. When to take effect.—This chapter shall take effect immediately.

Source.—Former Real Prop. L. (L. 1896, ch. 547) § 301.

SCHEDULE OF LAWS REPEALED.

†Revised Statutes.....Part 2, chapter 1, title 1, sections 1-4, 8-20
Revised Statutes.....Part 2, chapter 1, title 2, sections 1-62, 64-148
Revised Statutes.....Part 2, chapter 1, titles 3-5 All
Revised Statutes.....Part 2, chapter 2 All
Revised Statutes.....Part 2, chapter 3 All
Revised Statutes.....Part 2, chapter 7, title 1 All

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1782	2	All	1811	7	All
1784	18	All	1811	95	All
(8th Sess.)			1811	238	4
1786	12	All	R. L. 1813	31	All
1787	4	All	R. L. 1813	32	All
1787	36	All	R. L. 1813	80	1-4, 7-9
1787	37	All	R. L. 1813	97	All
1787	43	All	1814	5	All
1787	44	Part	1816	119	All
relating to real property			1817	69	1, 3-5
1787	48	All	1818	55	5, 6
1788	7	All	1819	25	All
1788	36	26-28	1821	136	All
1788	44	All	1822	245	1-4, 6
1788	45	All	1822	254	All
1788	46	32-34	1823	263	All
1792	51	All	1825	307	All
1793	50	All	1826	260	All
*1794	1	1, 3-7	1826	297	1-3
1794	44	All	1826	313	All
1797	18	All	1827	204	All
1798	17	All	1828	241	All
1798	72	All	1828	20	15,
1798	78	All	¶¶ 25-29, 46-47 (2d Meet.)		
1798	95	3	1828	21	1,
1799	44	7	¶¶ 5, 8, 9, 14-16, 66, 94, 96, 97, 210,		
1800	61	All	226, 327, 368, 399, 453, 485 (2d Meet.)		
1801	90	25, 26	1829	222	All
1801	155	All	1830	171	All
1801	156	All	1830	320	10-13
1801	169	All	1831	172	All
1802	49	All	1832	171	All
1804	109	26	1833	167	All
1805	25	All	1834	272	All
1805	98	All	1835	275	All
1805	128	3	1836	339	All
1806	17	All	1838	32	All
1806	167	All	1839	295	5
1806	168	All	1840	238	1
1807	74	1	1840	318	Part
1807	123	2	relating to real property		
1808	175	All	1841	261	Part
1809	44	1	relating to real property		
1811	1	2	1843	87	All

† Inserted and expressly repealed by L. 1909, ch. 240, § 92, in effect Apr. 22, 1909.

* Inserted and expressly repealed by L. 1909, ch. 240, § 95, in effect Apr. 22, 1909.

Laws repealed.

L. 1909, ch. 52.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1843	145	All	1890	503	All
1843	199	All	1891	100	All
1843	210	5	1891	155	All
1845	109	All	1891	172	All
1845	110	All	1891	209	All
1845	115	All	1892	208	All
1846	74	Part	1892	516	Part
relating to real property			relating to real property		
1846	182	3	1892	616	All
1846	274	All	1893	123	All
1847	170	All	1893	182	All
1848	195	All	1893	207	All
1853	303	All	1893	599	All
1854	111	All	1893	701	Part
1855	17	All	relating to real property		
1855	432	Part	1894	315	All
relating to real property			1894	729	All
1855	547	All	1895	171	All
1856	61	All	1895	525	All
1857	576	All	1895	793	All
1858	259	All	1895	886	All
1860	322	All	1895	1022	All
1860	345	All	1896	249	Part
1860	396	All	relating to real property		
1862	365	All	1896	547	All,
1863	246	All	except §§ 280-296		
1865	421	All	1896	572	2, 3
1867	557	All	1897	136	All
1868	513	All	1897	277	All
1868	798	All	1897	593	All
1870	208	All	1897	756	All
1872	120	All	1898	174	All
1872	141	All	1898	311	All
1872	358	All	1898	338	All
1873	551	All	1899	147	All
1873	583	All	1899	542	All
*1794	1	1, 3-7	1900	227	All
1874	261	All	1901	84	All
1875	38	All	1901	166	All
1875	336	All	1901	287	All
1875	545	All	1901	291	Part
1877	111	All	relating to real property		
1879	249	All	1901	481	All
1879	310	All	1901	611	All
1880	115	All	1902	151	All
1880	300	All	1903	88	All
1880	530	All	1903	98	All
1882	100	All	1903	419	All
1882	275	All	1903	432	All
1882	278	All	1903	490	All
1883	80	All	1904	235	All
1884	26	All	1904	528	All
1884	326	All	1904	690	All
1886	40	All	1904	692	Part
1886	257	All	relating to real property		
1887	539	All	1904	742	All
1888	246	All	1905	329	All
1889	42	All	1905	377	All
1889	406	1	1905	393	Part
1890	61	All	relating to real property		
1890	173	1	1905	449	All
1890	282	All	1905	450	All
1890	475	All	1906	398	All
1890	502	All	1907	242	All

* So in original.

L. 1909, ch. 52.

Consolidators' notes.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1907	289	All	1908	61	All
1907	347	All	1908	136	All
1907	621	All	1908	173	Part
1907	633	All		relating to real property	
1908	35	All	1908	444	All

CONSOLIDATORS' NOTES TO SCHEDULES OF REPEALS.

Statutes repealed, which are temporary or obsolete, or which have been consolidated in the "Consolidated Laws," are given with an explanatory note, as follows:

L. 1784, ch. 18.—Act relating to cancellation of mortgages. Obsolete.

L. 1786, ch. 12.—An act to abolish entails. All of this act except §§ 2 and 7 was repealed by L. 1828, ch. 21, § 1, ¶ 5. Sections 2 and 7 are now practically obsolete or repealed by implication.

L. 1787, ch. 43.—Concerning fines and recoveries of lands and tenements. Obsolete.

L. 1793, ch. 50.—Regulates conveyances by British subjects. Probably obsolete. In any event it is superseded by later acts (see § 301) and should be repealed.

L. 1794, ch. 44.—Extends time for depositing military deeds, etc., and regulating duties of clerks of Herkimer and Onondaga counties in respect to military deeds. The act is self-executing, obsolete, and the clerks' duties are covered by legislation of a later period. This act may safely be repealed. The Real Property Law and other acts cover the same ground.

L. 1798, ch. 78.—Regulates registry of deeds in counties of Ontario, Steuben, Tioga, Herkimer, Oneida, Chenango and Otsego. Practically obsolete. The subject-matter is covered by later legislation inconsistent therewith and the act should be repealed.

L. 1798, ch. 95, § 3.—This section amended L. 1798, ch. 72. The last-mentioned act was repealed by L. 1896, ch. 547, § 300. The amendatory act should be repealed.

L. 1805, ch. 128, § 3.—Extended the operation of L. 1801, ch. 155, since repealed.

L. 1806, ch. 17.—Ceased to operate by express limitation. Obsolete.

L. R. L., ch. 80, §§ 1-4, 7-9.—Regulates lands in military tract. Obsolete.

L. R. L., ch. 97.—Regulates recording of deeds. Sections 1-5, 8, 9, expressly repealed and §§ 6, 7, 10, 11 are obsolete and inconsistent with later legislation.

L. 1814, ch. 5.—Regulates recording of deeds of lands in the military tract. Obsolete.

L. 1826, ch. 313.—Authorizes county clerks to make general indexes of bonds and mortgages. Superseded by general provisions operative throughout all the counties of the state.

L. 1827, ch. 304.—Requires numerical indexes to the registers and records of mortgages in certain counties. Superseded by later legislation.

L. 1828, ch. 241.—Relates to acknowledgment of deeds by the agent of the Holland Land Company. Obsolete.

L. 1828, ch. 20, § 15, ¶¶ 25-29, 46, 47.—These sections amend portions of the Revised Statutes since repealed. They are dependent and should in turn be repealed.

L. 1830, ch. 320, §§ 10-13.—Section 12 expressly repealed. Sections 10, 11, 13 amend provisions of the Revised Statutes since repealed, and incorporated in the Real Property Law.

L. 1831, ch. 172; L. 1832, ch. 171, and L. 1833, ch. 167.—Extend time allowed by L. 1830, ch. 171, for resident aliens to make and file depositions. Latter act was repealed by L. 1896, ch. 547, § 300. Temporary and obsolete.

L. 1836, ch. 339, and L. 1838, ch. 32.—These acts are temporary, extending to resident aliens, certain provisions of the Revised Statutes since repealed.

L. 1840, ch. 238, § 1.—Abolishes office of commissioner of deeds and devolving powers and duties on justices of the peace. The "Executive Law" now regulates the powers and appointment of commissioners of deeds within the state.

L. 1840, ch. 318.—Consolidated in Real Property Law, § 114.

L. 1841, ch. 261.—Consolidated in Real Property Law, § 114.

L. 1843, ch. 145.—Regulating indexing of deeds and mortgages in Rensselaer county. Superseded by later legislation.

L. 1846, ch. 74.—Consolidated in Real Property Law, § 61.

L. 1855, ch. 17.—Consolidated in Real Property Law, § 18.

L. 1855, ch. 432.—Consolidated in Real Property Law, § 61.

L. 1862, ch. 365.—Sections 1, 2 and 4 have been superseded by being amended

"to read as follows." Sections 1, 4 by L. 1868, ch. 798, §§ 1, 2. Section 2 by L. 1882, ch. 100, § 1. Sections 3 and 5 are consolidated in Real Property Law, §§ 342, 344.

L. 1873, ch. 583.—The unrepealed part of § 1 of statute cited is consolidated in the Real Property Law, § 231. Section 2 is covered by the Real Property Law, § 231.

L. 1879, ch. 310.—Consolidated in Real Property Law, § 450.

L. 1882, ch. 100.—Consolidated in Real Property Law, § 341.

L. 1882, ch. 278.—Consolidated in Real Property Law, § 343.

L. 1886, ch. 40.—Consolidated in Real Property Law, § 261.

L. 1890, ch. 503.—Consolidated in Real Property Law, §§ 360-366.

L. 1892, ch. 516.—Section 1 was amended "to read as follows" by L. 1905, ch. 393, § 1. Balance of act is consolidated in Real Property Law, § 115.

L. 1893, ch. 701.—Section 2 was amended "so as to read as follows" by L. 1901, ch. 291, § 1. Balance of act is consolidated in Real Property Law, § 113.

L. 1895, ch. 793.—This chapter amends R. S., pt. 2, ch. 3, § 5, relating to acknowledgment of conveyances in foreign countries, which is repealed by L. 1896, ch. 547, § 300. The matter is covered by Real Property Law, § 301, and the act should be repealed.

L. 1895, ch. 1022.—Amended R. S., pt. 2, ch. 1, tit. 3, §§ 13, 14, and R. S., pt. 2, ch. 2, § 1. These selections of the Revised Statutes were afterwards transferred to the Real Property Law and repealed by L. 1896, ch. 547, § 300. L. 1895, ch. 1022, should now be repealed, as the substance of the acts is contained in the Real Property Law.

L. 1896, ch. 249.—Consolidated in Real Property Law, § 117.

L. 1896, ch. 547.—This chapter is the former Real Property Law. With the exception of art. 9, relating to the descent of real property, which is consolidated in Decedent Estate Law, art. 3, its live provisions are re-enacted in Consolidated Real Property Law, and the chapter may be repealed.

L. 1896, ch. 572, § 2.—This section amends R. S., pt. 2, ch. 3, § 1, since repealed by L. 1896, ch. 547, § 300. Pt. consolidated in Real Property Law, § 291, and remainder covered by said section.

L. 1897, ch. 136.—Section 2 was amended "to read as follows" by L. 1907, ch. 242, § 1. Balance of act consolidated in Real Property Law, § 105.

L. 1897, ch. 277.—Consolidated in Real Property Law, §§ 254, 258.

L. 1897, ch. 593.—Consolidated in Real Property Law, § 10.

L. 1898, ch. 338.—Consolidated in Real Property Law, §§ 271-273.

L. 1899, ch. 147.—Consolidated in Real Property Law, § 310.

L. 1897, ch. 756.—Consolidated in Real Property Law, § 14.

L. 1898, ch. 311.—Consolidated in Real Property Law, § 105.

L. 1900, ch. 227.—Consolidated in Real Property Law, § 72.

L. 1901, ch. 287.—Consolidated in Real Property Law, § 340.

L. 1901, ch. 291.—Consolidated in Real Property Law, § 113.

L. 1901, ch. 481.—This chapter added § 290-a to former Real Property Law. Art. 9 of the former Real Property Law, of which § 290-a is a part, has been transferred to Decedent Estate Law, and this chapter may be repealed.

L. 1901, ch. 611.—Subds. 2, 6 and 7 of this chapter have been superseded by being amended "so as to read as follows" by L. 1903, ch. 98, § 1, and L. 1904, ch. 528, §§ 1, 2, as noted in schedule. Balance of chapter is consolidated in Real Property Law, § 301.

L. 1902, ch. 151.—Consolidated in Real Property Law, § 111.

L. 1903, ch. 88.—Consolidated in Real Property Law, § 103.

L. 1903, ch. 88.—Consolidated in Real Property Law, § 301.

L. 1903, ch. 419.—Consolidated in Real Property Law, § 299.

L. 1903, ch. 432.—Consolidated in Real Property Law, §§ 67-71.

L. 1904, ch. 106.—This chapter amended Real Property Law, § 288. Art. 9 of the former Real Property Law, of which § 288 is a part, has been transferred to Decedent Estate Law, and this chapter may be repealed.

L. 1904, ch. 528.—Consolidated in Real Property Law, §§ 301, 308.

L. 1904, ch. 690.—Consolidated in Real Property Law, § 301.

L. 1904, ch. 692.—Consolidated in Real Property Law, § 274.

L. 1904, ch. 742.—Consolidated in Real Property Law, § 116.

L. 1905, ch. 329.—Consolidated in Real Property Law, § 311.

L. 1905, ch. 377.—Consolidated in Real Property Law, § 331.

L. 1905, ch. 393.—Consolidated in Real Property Law, § 115.

L. 1905, ch. 449.—Consolidated in Real Property Law, § 290.

L. 1905, ch. 450.—Consolidated in Real Property Law, § 306.

Cross-references.

- L. 1906, ch. 398.—Consolidated in Real Property Law, § 300.
 L. 1907, ch. 242.—Consolidated in Real Property Law, § 107.
 L. 1907, ch. 289.—Consolidated in Real Property Law, § 322.
 L. 1907, ch. 347.—Consolidated in Real Property Law, § 321.
 L. 1907, ch. 621.—Consolidated in Real Property Law, § 323.
 L. 1907, ch. 633.—Consolidated in Real Property Law, § 311.

RECEIVERS.

Of corporations generally; see General Corporation Law. Appointment of, in actions; Code Civ. Pro. §§ 1713-1716. Commissions; Code Civ. Pro. § 3320.

RECORDS AND DOCUMENTS.

Injury to public; Penal Law, § 2050. Offering false or forged instrument for filing or recording; Penal Law, § 2051. Typewriting machines may be used for recording; Public Officers Law, § 65.

RECORDING DEEDS, ETC.

See Real Property Law, §§ 290-332.

REFEREES.

Special, in certain cases; Code Civ. Pro. § 827. Referee's fees generally; Code Civ. Pro. § 3296. Referee's fees upon sales of real property; Code Civ. Pro. § 3297. Official, Judiciary L., §§ 115-117.

REFORMATORIES.

See Prison Law.

REFORMED CHURCHES.

See Religious Corporations Law, §§ 110-116.

REGATTAS.

Regulations for conduct of; Navigation Law, § 36.

REGENTS.

See Education Law, §§ 40-69.

REGISTER.

Neglecting to make transcripts or making false certificates; Penal Law, § 1874.

REGISTRATION OF TITLE.

Real Property L., §§ 370-435.

RELIGION.

Disturbing religious meetings; Penal Law, §§ 2071, 2072. Compelling adoption of form of belief; Penal Law, § 2073.

RELIGIOUS CORPORATIONS LAW.

L. 1909, ch. 53.—“An act in relation to religious corporations, constituting chapter fifty-one of the consolidated laws.”
[In effect February 17, 1909.]

CHAPTER LI OF THE CONSOLIDATED LAWS.**RELIGIOUS CORPORATIONS LAW.**

- Article 1. Short title and definitions (§§ 1, 2).
 2. General provisions (§§ 3-27).
 3. Protestant Episcopal parishes or churches (§§ 40-47).
 4. Presbyterian churches (§§ 60-70).
 5. Roman Catholic and Greek churches (§§ 90-92).
 5-a. Ruthenian Greek Catholic churches (§§ 100-102).
 6. Reformed Dutch, Reformed Presbyterian and Lutheran churches (§§ 110-116).
 7. Baptist churches (§§ 130-140).
 8. Congregational and Independent churches (§§ 160-171).
 9. Free churches (§§ 180-183).
 10. Other denominations (§§ 190-206).
 11. Union churches (§§ 220, 221).
 12. Laws repealed; when to take effect (§§ 260, 261).
 13. Spiritualist churches (§§ 262-273).

ARTICLE I.**SHORT TITLE AND DEFINITIONS.**

- Section 1. Short title.
 2. Definitions.

§ 1. Short title.—This chapter shall be known as the “Religious Corporations Law.”

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 1; section was new in former Religious Corporations Law.

Revisors' note; history of legislation.—The first general law of this state for the incorporation of churches was ch. 18 of the Laws of 1784, seventh session, and was applicable to all denominations. Certain features of the Dutch Reformed church did not harmonize with this law and a second general law was enacted—ch. 61, Laws of 1788, eleventh session—applicable only to Dutch Reformed churches. For similar reasons a third general law, applicable only to Protestant Episcopal churches, was enacted—ch. 25, Laws of 1795, eighteenth session. These

L. 1909, ch. 53.

Short title and definitions.

§ 2.

three statutes were consolidated in ch. 79 of the revision of 1801, which was substantially re-enacted as ch. 60 in the revision of 1813, which was not included in the Revised Statutes, and, as amended to date, is still in force.

The general law of 1795, for the incorporation of Episcopal churches, was made the basis of § 1, of the act of 1813, now consisting of eighteen subdivisions; the general law for the incorporation of Dutch Reformed churches was made the basis of § 2, of the act of 1813; and the first general law of 1784, originally applicable to all churches, was made the basis of § 3. Separate statutes have since been passed for the incorporation of Roman Catholic churches, Laws 1863, ch. 45; of Greek churches, Laws 1871, ch. 12; of Baptist and Congregational churches, Laws 1873, ch. 633, repealed by ch. 50 of Laws 1890; of Baptist churches, Laws 1876, ch. 329, and many supplemental and amendatory statutes have been passed since 1813, some of which made special provisions for particular denominations. (Report of Statutory Revision Commission, 1895.)

§ 2. Definitions.—A “religious corporation” is a corporation created for religious purposes.

An “incorporated church” is a religious corporation created to enable its members to meet for divine worship or other religious observances.

An “unincorporated church” is a congregation, society, or other assemblage of persons who are accustomed to statedly meet for divine worship or other religious observances, without having been incorporated for that purpose.

The term “minister,” includes a clergyman, pastor, rector, priest, rabbi, or other person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church, to preside over and direct the spiritual affairs of the church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 2; section was new in former Religious Corporations Law.

Private civil corporations, with powers defined by statute. *Robertson v. Bullions* (1854), 11 N. Y. 243; *People v. Hurlbert* (1871), 46 N. Y. 110; *Watkins v. Wilcox* (1875), 4 Hun 220 *affd.* (1876), 66 N. Y. 654; *Kniskern v. Lutheran Churches* (1844), 1 Sandf. Ch. 439; *Wilson v. Tabernacle Bap. Ch.* (1899), 28 Misc. 268, 59 N. Y. Supp. 148.

Corporations organized before 1828 are not subject to subsequent changes unless adopted by them. *People ex rel. Sturges v. Keese* (1882), 27 Hun 483; *The Dartmouth College Case* (1819), 4 Wheat. 518.

Members having privilege of voting constitute the corporation.—*Wyatt v. Benson* (1857), 23 Barb. 327; *Robertson v. Bullions* (1854), 11 N. Y. 243; *Baptist Church v. Witherell* (1832), 3 Paige 296; *Cram v. Evan. Luth. Soc.* (1867), 36 N. Y. 161; *People v. German Ch.* (1874), 53 N. Y. 103.

Spiritual matters not subject to jurisdiction of courts.—*Baptist Church v. Witherell* (1832), 3 Paige 296; *Connit v. The Reformed Church* (1900), 54 N. Y. 563; *Walker v. Wainwright* (1853), 16 Barb. 486; *Rector of St. James' Ch. v. Huntington* (1894), 82 Hun 125, 31 N. Y. Supp. 91; *Baxter v. McDonnell* (1898), 155 N. Y. 83, 49 N. E. 667, 40 L. R. A. 670, *revd.* (1897), 18 App. Div. 235, 45 N. Y. Supp. 765. The courts will not review questions of faith, doctrine and discipline. *Waller v. Howell* (1897), 20 Misc. 236, 45 N. Y. Supp. 790. The question of membership is purely ecclesiastical, and no civil right is involved in a claim to be regarded as a

communicant of a particular church. *Id.* Where a person voluntarily enters the ministry of the Episcopal church he thereby becomes subject to the rules and canons of that church, and he must accept the benefits or burdens of whatever remedies are provided for him within the church. *Rector of St. James' Ch. v. Huntington* (1894), 82 Hun 125, 31 N. Y. Supp. 91.

ARTICLE II.

GENERAL PROVISIONS.

- Section 3. Filing and recording certificates of incorporation of religious corporations.
4. Property of unincorporated society transferred by its incorporation.
 5. General powers and duties of trustees of religious corporations.
 6. Acquisition of property by religious corporations for branch institutions; establishment, maintenance and management thereof.
 7. Acquisition of property by religious corporations for cemetery purposes; management thereof.
 8. Lot owners' rights.
 9. Removal of human remains from one cemetery of a religious corporation to another cemetery owned by it.
 10. Acquisition of property by two or more religious corporations for a common parsonage.
 11. Correction and confirmation of conveyances to religious corporations.
 12. Sale, mortgage and lease of real property of religious corporations.
 13. Consolidation of incorporated churches.
 14. Judicial investigation of amount of property of religious corporations.
 15. Corporations with governing authority over churches.
 16. Property of extinct churches.
 17. Property of extinct Free Baptist churches.
 18. Dissolution of religious corporations.
 19. Corporations for organizing and maintaining mission churches and Sunday schools.
 20. Corporations for acquiring parsonages for presiding elders and camp-meeting grounds.
 21. Corporations for acquiring camp-meeting grounds for the Reformed Methodist denomination.
 - 21-a. Corporations for acquiring lands for parsonage or camp meeting purposes for the Free Methodist denomination.
 22. Establishing and maintaining a home for aged poor.
 23. Powers of churches created by special laws.
 24. Government of churches incorporated prior to January first, eighteen hundred and twenty-eight.
 25. Pastoral relation.
 26. Worship.
 27. Reservation as to Baptist and Congregational churches.

§ 3. Filing and recording certificates of incorporation of religious corporations.—The certificate of incorporation of a religious corporation shall be acknowledged or proved before an officer authorized to take the acknowledgment or proof of deeds or conveyances of real estate, to be

recorded in the county in which the principal office or place of worship of said corporation is or is intended to be situated, and shall be filed and recorded in the office of the clerk of said county. If there is not, or is not intended to be, any such office or place of worship, the certificate shall be filed and recorded in the office of the secretary of state.

The recording of any certificate of a religious corporation organized under provisions of "An act to provide for the incorporation of religious societies," passed April fifth, eighteen hundred and thirteen, and of the acts amending the same, in the office of a clerk of a county prior to the passage of chapter thirty-five of the laws of eighteen hundred and ninety-seven, instead of in the office of the register of such county, shall be regarded and construed and such recording is hereby declared to be of the same validity, force and effect as would have been the recording of such certificate in the proper office. And every act, deed, matter and thing done or performed by every such religious society or corporation since the recording of its certificate in the office of said county clerk is hereby ratified, confirmed and declared to be as valid in all respects as if the said certificate had been properly and appropriately recorded in the office of the register of the county in which said religious society or corporation was organized; but this section shall not affect any suit or proceeding already commenced arising out of such original mistake.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 3, as amended by L. 1896, ch. 336. Last paragraph from L. 1897, ch. 23, § 1; originally revised from L. 1813, ch. 60, § 1, subd. 7, as amended by L. 1868, ch. 803, and subd. 18, as added by L. 1886, ch. 98 (Episcopal); L. 1813, ch. 60, § 3, as amended by L. 1890, ch. 66; L. 1844, ch. 158, § 1 (other churches).

References.—Fees of county clerk, for filing, six cents; for recording, ten cents, per folio, Code Civ. Pro. § 3304. Definition of term "certificate of incorporation," General Corporation Law, § 3. Qualifications of incorporators Id. § 4. Taxes and fees for filing Id. § 5. Amended and supplemental certificates, Id. §§ 5, 7. Certificates as evidence, Id. § 9.

Contents.—The Secretary of State should not file a certificate for a proposed religious corporation which does not show that the persons executing such certificate are of full age, two-thirds of them citizens of the United States, and at least one a resident of New York. Rept. of Atty. Genl. (1912), 393.

Mandamus to compel filing. People ex rel. Derby v. Rice (1891), 129 N. Y. 461, 29 N. E. 358; People ex rel. N. Y. Phonograph Co. v. Rice (1890), 57 Hun 486, 11 N. Y. Supp. 249, affd. (1891), 128 N. Y. 591, 28 N. E. 251.

§ 4. Property of unincorporated society transferred by its incorporation.—All the temporalities and property of an unincorporated church, or of any unincorporated religious society, body, association or congregation, shall, on the incorporation thereof, become the temporalities and property of such corporation, whether such temporalities or property be given, granted or devised directly to such unincorporated church, society, body, association or congregation, or to any other person for the use or benefit thereof.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 4; originally revised

§ 4.	General provisions.	L. 1909, ch. 53.
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from L. 1813, ch. 60, § 4 (churches generally); L. 1863, ch. 45, § 1, subd. 2 (Roman Catholic); L. 1871, ch. 12, § 1, subd. 2 (Greek).

References.—Amount of property which may be acquired. See General Corporation Law, § 12. Limitation on devises or bequests. See Decedent Estate Law, § 17. Exemption of corporate property. See Tax Law, § 4, subd. 7, § 221.

Title to property vests in the corporate body, not in the trustees. *People v. Fulton* (1854), 11 N. Y. 94; *Robertson v. Bullions* (1896), 11 N. Y. 243; *Gram v. The Prussia, etc., Soc.* (1899), 36 N. Y. 161; *People v. Mayor* (1875), 63 N. Y. 291; *Wyatt v. Benson* (1857), 23 Barb. 327; *Burrell v. Associate Reform Ch.* (1865), 44 Barb. 282.

Grant to individuals for use of unincorporated church vests in church on incorporation. *Ref. Dutch Ch. v. Veeder* (1830), 4 Wend. 494; *Church of Redemption v. Grace Ch.* (1902), 68 N. Y. 570; *Trustees, etc. v. Bly* (1902), 73 N. Y. 323; *Voorhees v. Presbyterian Ch.* (1853), 17 Barb. 103; *Baptist Ch. in Hartford v. Withereil* (1832), 3 Paige 296.

Conveyance may be enforced where real property is purchased and paid for by unincorporated association, which afterwards incorporates. *Church of St. Stanislaus v. Aalegemeine Verein* (1898), 31 App. Div. 133, 52 N. Y. Supp. 922, *affd.* (1900), 164 N. Y. 606, 58 N. E. 1086.

Trusts.—Corporations may hold property in trust for corporate purposes. *Williams v. Williams* (1853), 8 N. Y. 525. But trustees cannot take a trust for the members of the church as distinguished from the members of the corporation. *Robertson v. Bullions* (1854), 11 N. Y. 243; *Gram v. The Prussia, etc., German Soc.* (1867), 36 N. Y. 161. Trust not appearing in deed may be shown by parol. *Church of Redemption v. Grace Ch.* (1877), 68 N. Y. 570. Denominational trust cannot be diverted. *Petty v. Tooker* (1860), 21 N. Y. 267; *Kniskern v. Lutheran Chs.* (1844), 1 Sandf. Ch. 439; *Miller v. Gable* (1845), 2 Den. 492; *Field v. Field* (1894), 9 Wend. 394; *People ex rel. Griffin v. Steele* (1848), 2 Barb. 397; *Matter of First Presbyterian Ch. of Buffalo* (1887), 106 N. Y. 241, 12 N. E. 626; *Woodworth v. Payne* (1878), 74 N. Y. 196.

Under the provisions of § 4 of the act of 1813, from which this section was derived, a religious corporation was authorized to take possession of personal property that had been given, granted or devised directly to it or to any other person for its use and to hold the same for its use or to other pious uses. But this statute did not authorize a corporation created thereby to take or hold property in trust for other corporations or for individuals. *Tabernacle Church v. Fifth Ave. Church* (1901), 60 App. Div. 327, 70 N. Y. Supp. 181, *affd.* (1902), 172 N. Y. 598, 64 N. E. 1126.

Diversion of property from its denominational uses, not allowable. *First Reformed Ch. v. Bowden* (Gen. T.) (1883), 14 Abb. N. C. 356; *Isham v. Fullager* (1881), (Gen. T.), 14 Abb. N. C. 363; *Isham v. Trustees of First Presbyterian Ch.* (1882), 63 How. Pr. 465; *People ex rel. Peck v. Conley* (1886), 42 Hun 98; *Trustees v. Westminster Presby. Church* (1910), 67 Misc. 317, 321, 122 N. Y. Supp. 309, *revd.* (1911), 142 App. Div. 876, 127 N. Y. Supp. 851. Corporate property cannot be divided among members. *Reformed Ch. v. Schoolcraft* (1875), 65 N. Y. 134; *Wheaton v. Gates* (1897), 18 N. Y. 395.

Pew-owners.—A pew-owner has only limited interest in pew, subject to the rights of the trustees to manage the corporate property. *Freligh v. Platt* (1826), 5 Cow. 494; *Baptist Ch. of Hartford v. Withereil* (1832), 3 Paige 296; *Wheaton v. Gates* (1897), 18 N. Y. 395; *Matter of Reformed Ch.* (1853), 16 Barb. 237; *Voorhees v. Presbyterian Ch.* (1849), 8 Barb. 135, *affd.* (1853), 17 Barb. 103; *Cooper v. First Presbyterian Ch.* (1860), 32 Barb. 222; *White v. Trustees, etc.* (1871), 3 Lans. 477; *Went v. Methodist Prot. Ch.* (1894), 80 Hun 266, 30 N. Y. Supp. 157, *affd.* (1896), 150

N. Y. 577, 44 N. E. 1129; *Solomon v. Congregation* (1875), 49 How. Pr. 263. Persons having obnoxious opinions may be excluded. *Petty v. Tooker* (1897), 21 N. Y. 267. Absolute sale of pew without reservation of rent is not authorized. *Voorhees v. Presbyterian Ch.* (1849), 8 Barb. 135, *affd.* (1853), 17 Barb. 103. Lease of pew in perpetuity is an interest in real estate. *St. Paul's Ch. v. Ford* (1860), 34 Barb. 16. Contract for pew beyond one year must be written. *First Baptist Ch. of Ithaca v. Bigelow* (1836), 16 Wend. 28. Action by pew-owner against person disturbing him in possession. *Shaw v. Beveridge* (1842), 3 Hill 26; *Baptist Ch. in Hartford v. Witherell* (1832), 3 Paige 296. Hold as tenants in common. *St. Paul's Ch. v. Ford* (1860), 34 Barb. 16. Dower in pew. *Bronson v. St. Peter's Ch.* (1848), 7 N. Y. Leg. Obs. 361. Contract must be shown, before action for rent can be maintained. *Trustees v. Quackenbush* (1813), 10 Johns. 217; *St. Paul's Ch. v. Ford* (1860), 34 Barb. 16. Deed of pew with certain conditions, construed in *Samuels v. Congregation Kol Israel* (1900), 52 App. Div. 287, 65 N. Y. Supp. 192.

Subscriptions.—See *Twenty-third St. Baptist Ch. v. Cornell* (1890), 117 N. Y. 601, 23 N. E. 177, 6 L. R. A. 807; *Pres. Ch. in Albany v. Cooper* (1889), 112 N. Y. 517, 20 N. E. 352, 3 L. R. A. 468; *Presbyterian Ch. v. Beach* (1876), 8 Hun 644, *revd.* (1878), 74 N. Y. 72; *Ref. Prot. Dutch Ch. v. Brown* (Ct. of App.) (1861), 24 How. Pr. 76.

§ 5. General powers and duties of trustees of religious corporations.—The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation, or, providing the members of the corporation at a meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object conducted by said corporation or in connection with it, or with the denomination, if any, with which it is connected; and they shall not use such property or revenues for any other purpose or divert the same from such uses. By-laws may be adopted or amended, by a two-thirds vote of the qualified voters present and voting at the meeting for incorporation or at any subsequent meeting, after written notice, embodying such by-laws or amendment, has been openly given at a previous meeting, and also in the notices of the meeting at which such proposed by-laws or amendment is to be acted upon. By-laws thus adopted or amended shall control the action of the trustees. But this section does not give to the trustees of an incorporated church, any control over the calling, settlement, dismissal or removal of its minister, or the fixing of his salary; or any power to fix or change the times, nature or order of the public or social worship of such church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 5, as amended by L. 1896, ch. 336; L. 1897, ch. 144, and L. 1897, ch. 621; originally revised from L. 1813, ch. 60, § 4 (churches generally); L. 1822, ch. 187, § 1 (Reformed Presbyterian); L. 1835, ch. 90, § 8 (Reformed Dutch); L. 1875, ch. 79, § 4 (churches generally); L. 1876, ch. 176, § 1 (churches generally); L. 1876, ch. 329, § 6 (Baptist).

Reference.—Powers and obligations of corporate trustees generally. See General Corporation Law, § 34.

History of section.—Westminster Presbyterian Church v. Trustees of Presbytery (1911), 142 App. Div. 855-868, 127 N. Y. Supp. 836, appeal dis. (1911), 202 N. Y. 581, 96 N. E. 1134.

Chapter 79 of the Laws of 1875 and chapter 110 of the Laws of 1876 were intended to restrain the diversion of church property from one sect to another. These statutes (now consolidated in this section), provide that the trustees shall hold and administer such property according to the rules and usages of the denomination to which the church members of the corporation belong, and shall not divert it to the support of some other disconnected institution. Where a religious corporation was formed (L. 1880, ch. 167) after the passage of these acts, by the consolidation of two pre-existing church corporations, it is subject to the obligation first imposed by the act of 1875, and which has continued ever since, to administer its property in accordance with the discipline, rules and usages of the religious denomination with which the corporation is connected. Westminster Church v. Presbytery of N. Y. (1914), 211 N. Y. 214, 105 N. E. 199.

Title to office can only be attacked by proceeding in nature of a *quo warranto*. Parish of Belleport v. Tooker (1859), 29 Barb. 256; People v. Lacoste (1867), 37 N. Y. 192; People ex rel. Gearn v. Farrington (1861), 22 How. Pr. 294; Hartt v. Harvey (1860), 32 Barb. 55; Reis v. Rhode (1884), 34 Hun 161; Wyatt v. Benson (1857), 23 Barb. 327; Concord Soc. v. Stanton (1885), 38 Hun 1; Jackson v. Nestles (1808), 3 Johns. 115; North Baptist Ch. v. Parker (1862), 36 Barb. 171.

Individual action of trustees will not bind corporation. People's Bank v. St. Anthony's Rom. Cath. Ch. (1888), 109 N. Y. 512, 17 N. E. 408; Landers v. The Frank St. M. E. Ch. (1889), 114 N. Y. 626, 21 N. E. 420; Hart v. Trustees (1883), 49 Super. St. (17 J. & S.) 523.

Powers of de facto trustees.—See Ebaugh v. German Ref. Ch., 3 E. D. Smith (1854), 60; Green v. Cady (1832), 9 Wend. 414; The North Baptist Ch. v. Parker (1862), 36 Barb. 171.

Proxy.—Director cannot vote by. Craig Med. Co. v. Merchants' Bank (1891), 59 Hun 561, 14 N. Y. Supp. 16.

Contracts.—What are *ultra vires*; ratification. See Parshley v. Methodist Ch. (1895), 147 N. Y. 583, 42 N. E. 15, 30 L. R. A. 574.

Ministers.—"Induction" unknown to our law. Youngs v. Ransom (1859), 31 Barb. 49. Courts will not interfere with action of church authorities in appointing or removing a minister. Walker v. Wainwright (1853), 16 Barb. 486; Isham v. Fullager (1881), 14 Abb. N. C. 363. But mandamus will lie to put a minister in possession where regularly appointed. People ex rel. Griffin v. Steele (1848), 2 Barb. 397; People ex rel. Peck v. Conley (1886), 42 Hun 98; People v. Trustees First M. E. Ch. (1886), 3 N. Y. St. Rep. 372. Salary of minister must be fixed as prescribed by statute. Pendleton v. Waterloo Baptist Ch. (1888), 49 Hun 596, 2 N. Y. Supp. 383; Landers v. Frank St. M. E. Ch. (1884), 97 N. Y. 119. See also as to the rights and relations of ministers generally, Humbert v. St. Stephen's Ch. (1832), 1 Ed. Ch. 308; Youngs v. Ransom (1859), 31 Barb. 49; Paddock v. Brown (1844), 6 Hill 530; Lawyer v. Clipperly (1838), 7 Paige 281; Miller v. Gable (1845), 2 Den. 492; Conway v. Carpenter (1894), 80 Hun 428, 30 N. Y. Supp. 315; Bristor v. Burr (1890), 120 N. Y. 427, 24 N. E. 937, 8 L. R. A. 710.

Right of president of annual conference of Methodist Episcopal church, during recess of conference, to station minister in vacant church, affirmed. Matter of Robinson v. Cocheu (1897), 18 App. Div. 325, 46 N. Y. Supp. 55.

In the Roman Catholic church the relation of bishop and priest is not that of employer and employee, but of ecclesiastic superior and inferior. Baxter v. McDonnell (1898), 155 N. Y. 83, 49 N. E. 667, 40 L. R. A. 670, revg. (1897), 18 App. Div. 235, 45 N. Y. Supp. 765.

Section cited.—*Burke v. Rector, etc., Trinity Church* (1909), 63 Misc. 43, 45, 117 N. Y. Supp. 255, *affd.* (1909), 132 App. Div. 930, 117 N. Y. Supp. 1130.

§ 6. Acquisition of property by religious corporations for branch institutions; establishment, maintenance and management thereof.—Any religious corporation may acquire property for associate houses, church buildings, chapels, mission-houses, school-houses for Sunday or parochial schools, or dispensaries of medicine for the poor, or property for the residence of its ministers, teachers or employees, or property for a home for the aged. The persons attending public worship in any such associate house, mission-house, church building, or chapel connected therewith shall not by reason thereof have any rights as members of the parent corporation. The persons stately worshipping in any such house, mission-house, church building or chapel may, with the consent of the trustees of such corporation, become separately incorporated as a church, and the parent corporation may, in pursuance of the provisions of law regulating the disposition of real property by religious corporations, rent or convey to the new corporation, with or without consideration, any such associate house, church building, chapel, mission-house, school-house or dispensary and the lot connected therewith, subject to such regulations as the trustees of the parent corporation may make. Any religious corporation shall have power to establish, maintain and manage by its trustees or other officers as a part of its religious purpose a home for the aged, and may take and hold by conveyance, donation, bequest or devise real and personal property for such purpose, and may purchase and may erect suitable buildings therefor. Any such corporation may take and hold any grant, donation, bequest or devise of real or personal property heretofore or hereafter made upon trust, and apply the same, or the income thereof, under the direction of its trustees or other officers, for the purpose of establishing, maintaining and managing such a home and for the erection, preservation, repair or extension of any building or buildings for such purpose.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 6, as amended by L. 1896, ch. 525; originally revised from L. 1850, ch. 122, § 2, as amended by L. 1879, ch. 117; L. 1867, ch. 657.

References.—Homes for aged poor. See § 22, *post*. Exemption from taxation, Tax Law, § 4, subd. 7, 221. Devises and bequests for religious purposes, Real Property Law, § 113, Personal Property Law, § 13.

Consent should be in writing. *Ch. of Redemption v. Grace Ch.* (1877), 68 N. Y. 570. Mere consent does not vest real property in associate society. *Alexander Presbyterian Ch. v. Fifth Ave. Presbyterian Ch.* (1876), 64 N. Y. 274.

§ 7. Acquisition of property by religious corporations for cemetery purposes; management thereof.—A religious corporation may take and hold, by purchase, grant, gift or devise, real property for the purposes of a cemetery; or such lot or lots in any cemetery connected with it, as may be conveyed or devised to it, with or without provisions limiting interments therein to particular persons or classes of persons; and may take and hold

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any property granted, given, devised or bequeathed to it in trust to apply the same or the income or proceeds thereof, under the direction of the trustees of the corporation, for the improvement or embellishment of such cemetery or any lot therein, including the erection, repair, preservation or removal of tombs, monuments, gravestones, fences, railings or other erections, or the planting or cultivation of trees, shrubs, plants, or flowers in or around any such cemetery or cemetery lots.

A religious corporation may erect upon any property held by it for cemetery purposes, a suitable building for religious services for the burial of the dead, or for the use of the keepers or other persons employed in connection therewith, and may sell and convey lots in such cemetery for burial purposes, subject to such conditions and restrictions as may be imposed by the instrument by which the same was acquired, or by the rules and regulations adopted by such corporation. Every such conveyance of a lot or plat for burial purposes, signed, sealed and acknowledged in the same manner as a deed to be recorded, may be recorded in like manner and with like effect as a deed of real property.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 7; originally revised from L. 1842, ch. 153, § 1; L. 1842, ch. 215, § 1; L. 1850, ch. 122, § 3; L. 1881, ch. 501, § 1; L. 1884, ch. 198.

References.—Trusts for cemeteries, Real Property Law, § 114a; Personal Property Law, § 13-a. Injury to property in cemeteries, Penal Law, § 1427. Liens on monuments, gravestones, etc. Lien Law, §§ 120-124.

Perpetuities.—The legislative intent was to abrogate the rule against perpetuities in the case of gifts to religious corporations for cemetery purposes. A gift for the perpetual care of a burial plot is, therefor, not void. *Driscoll v. Hewlett* (1910), 198 N. Y. 297, 91 N. E. 784, affg. (1909), 132 App. Div. 125, 116 N. Y. Supp. 466.

The power to take and hold real property for cemetery purposes is subject to the exercise of the police power of the state, including the legitimate exercise of the powers of boards of health in towns. *Morton v. St. Patrick's R. C. Church Society* (1907), 56 Misc. 71, 105 N. Y. Supp. 1100.

Duty to protect grave.—No such duty is imposed upon the corporation in the absence of a statutory requirement or express contract to do so. Therefore, the corporation is not liable in damages to the relatives of a decedent whose body was stolen from a grave. *Coleman v. St. Michael's Protestant Church* (1915), 170 App. Div. 658, 155 N. Y. Supp. 1036.

§ 8. **Lot owners' rights.**—Lots in such cemeteries shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall descend to his heirs-at-law or devisees, subject, however, to the following limitations and conditions: If he leaves a widow and children, they shall have in common the possession, care and control of such lot during her life. If he leaves a widow and no children, she shall have the possession, care and control of such lot during her life. If he leaves children and no widow, they, or the survivor of them, shall in common have the possession, care and control of such lot during the life of the survivor of them. The parties having such possession, care and control of such lot

during the term thereof, may erect a monument and make other permanent improvements thereon. The widow shall have the right of interment, for her own body in such lot, or in a tomb in such lot and a right to have her body remain permanently interred or entombed therein, except that her body may be removed therefrom to some other family lot or tomb with the consent of her heirs. At any time when more than one person is entitled to the possession, care or control of such lot, the persons so entitled thereto shall designate in writing to the religious corporation which of their number shall represent the lot, and on their failure to designate, the board of trustees or directors of the corporation shall enter of record which of said parties shall represent the lot, while such failure continues. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

Source.—L. 1869, ch. 727, § 4, as added by L. 1898, ch. 543, § 1.

Consolidators' note.—L. 1869, ch. 727, was an act entitled "An act authorizing cities and villages to acquire titles to property for burial purposes and to levy taxes for the payment of the same." It was amended by L. 1870, ch. 760, being a substantial re-enactment of the statute of 1869, and adding a new section, § 3. Section 1, of L. 1870, ch. 760, was amended by L. 1873, ch. 452, which latter statute also re-enacted § 2, of L. 1870, ch. 760. This series of statutes was amended finally by L. 1898, ch. 543, by adding §§ 4 and 5. The original act prior to the amendment of 1898, was applicable to cities, incorporated villages and incorporated rural cemetery associations. The statute therefore has been consolidated in the General Municipal Law covering cities and villages and has been considered as covered by the provisions of the Membership Corporations Law. The act of 1898 which added a new section to the original statutes made that section applicable to cemetery corporations mentioned in the original acts and to cemetery corporations provided for in art. 3, of the Membership Corporations Law, and cemeteries belonging to religious corporations. The provisions of the statutes of 1898, therefore, have been consolidated in the Membership Corporations Law and in the Religious Corporations Law. Thus all of the provisions of the statute of 1869 and its amendments have been provided for and all of the statutes have been repealed in their respective consolidated laws.

Removal of bodies.—The provisions of the above section authorizing the removal of the body of a widow from a cemetery lot, "to some other family lot or tomb with the consent of her heirs" do not entitle the children of a woman who was buried in a cemetery owned by a religious corporation, in the portion thereof set apart from persons who did not own a family lot, to exhume the body and reenter it beside the remains of her husband in a family lot subsequently purchased by them in another cemetery. *Matter of Cohen* (1902), 76 App. Div. 401, 78 N. Y. Supp. 417.

§ 9. Removal of human remains from one cemetery of a religious corporation to another cemetery owned by it.—A religious corporation, notwithstanding the restrictions contained in any conveyance or devise to it, may remove the human remains buried in a cemetery owned by it, or when such church corporation is situated outside of a city in the grounds surrounding the church belonging to such corporation, to another cemetery owned by it, or to a plot or lot acquired by it in any other cemetery located in the same town, or in a town adjoining the town or

city in which the cemetery wherein such human remains are buried is located, if the trustees thereof so determine, and if either three-fourths of the members of such corporation, qualified to vote at its corporate meetings, sign and acknowledge and cause to be recorded in the office of the clerk of the county in which such cemetery or a part thereof is situated, a written consent thereto, or if three-fourths of the members of such corporation qualified to vote, and present and voting, at a corporate meeting of such corporation, specially called for that purpose, shall approve thereof. But if such corporation be a church, previous notice of the object of such meeting shall be published for at least four successive weeks in a newspaper of the town, village or city in which the cemetery from which the removal is proposed, is situated, or if no newspaper is published therein, then in a newspaper designated by the county judge of such county. Such removal shall be made in an appropriate manner and in accordance with such directions as to the manner thereof, as may be given by the board of health of the town, village or city in which the cemetery from which the removal is made, is situated. All tombstones, monuments or other erections at or upon any grave from which any remains are removed, shall be properly replaced or raised at the grave where the remains are reinterred. (*Amended by L. 1915, ch. 213.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 8, as amended by L. 1905, ch. 324; originally revised from L. 1842, ch. 215, § 2; L. 1878, ch. 349, as amended by L. 1887, ch. 600.

Right of removal.—In the absence of a regulation adopted by a religious corporation as to who shall determine the right to remove a body buried in its cemetery the question will be determined by the court upon equitable grounds. If a body is interred with an intent to remove it equity will enforce the right of removal. *Cohen v. Congregational Shearith Israel* (1906), 114 App. Div. 117, 99 N. Y. Supp. 732, *affd.* (1907), 189 N. Y. 528, 82 N. E. 1125.

§ 10. **Acquisition of property by two or more religious corporations for a common parsonage.**—Two or more religious corporations may acquire such real property as may be necessary for use as a parsonage, and the right, title and interest of each corporation therein shall be in proportion to its contribution to the cost of such property. The trustees of each corporation shall, from time to time, appoint one of their number to be a trustee of such common parsonage property, to hold office during the pleasure of the appointing trustees or until his successor be appointed. The trustees so appointed shall have the care and management of such property and may make such improvements thereupon as they deem necessary, and determine the proportion of the expense of the maintenance thereof which each corporation shall bear. If at any time either of such corporations acquires or desires to acquire for its own exclusive use as a parsonage other real property, it may, in pursuance of the provisions of law, relating to the disposition of real property by religious corporations, sell and convey its interest in such common parsonage property to any one or more of the other corporations having an interest therein.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 9; originally revised from L. 1875, ch. 408.

§ 11. **Correction and confirmation of conveyances to religious corporations.**—If, in a conveyance of real property, or in any instrument intended to operate as such, heretofore or hereafter made to a religious corporation, its corporate name is not stated or is not correctly stated, but such conveyance or instrument indicates the intention of the grantor therein to convey such property to such corporation, and such corporation has entered into possession and occupation of such property, any officer of the corporation authorized so to do by its trustees may record in the office where such conveyance or instrument is recorded a statement, signed and acknowledged by him or proved, setting forth the date of such conveyance or instrument, the date of record and the number and page of the book of record thereof, the name of the grantor, a description of the property conveyed or intended to be conveyed, the name of the grantee as expressed in such conveyance or instrument, the correct name of such corporation, the fact of authorization by the trustees of the corporation, to make and record such statement, and that the grantor in such conveyance or instrument intended thereby to convey such property to such corporation as the said officer verily believes, with the reason for such belief. Such statement so signed and acknowledged or proved shall be recorded with the records of deeds in such office, and indexed as a deed from the grantee as named in such instrument or in such conveyance to such corporation. The register or clerk, as the case may be, shall note the recording of such statement on the margin of the record of such conveyance, and for his services shall be entitled to receive the fees allowed for recording deeds. Such statement so recorded shall be presumptive evidence that such matters therein stated are true, and that such corporation was the grantee in the original instrument or conveyance. All conveyances heretofore made, or by any instrument intended to be made, to a religious corporation of real property appropriated to the use of such corporation, or entitled to be so appropriated, are hereby confirmed and declared valid and effectual, notwithstanding any defect in the form of the conveyance or the description of the grantee therein.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 10, as amended by L. 1896, ch. 336; originally revised from L. 1863, ch. 45, § 1, subd. 5 (Roman Catholic); L. 1871, ch. 12, § 1, subd. 5 (Greek); L. 1888, ch. 459 (corporations generally).

§ 12. **Sale, mortgage and lease of real property of religious corporations.**—A religious corporation shall not sell or mortgage any of its real property without applying for and obtaining leave of the court therefor pursuant to the provisions of article four of the general corporation law. The trustees of an incorporated Protestant Episcopal church shall not vote upon any resolution or proposition for the sale, mortgage or lease of its real property, unless the rector of such church, if it then has a rector, shall be present, and shall not make application to the court for leave

to sell or mortgage any of its real property without the consent of the bishop and standing committee of the diocese to which such church belongs; but in case the see be vacant, or the bishop be absent or unable to act, the consent of the standing committee with their certificate of the vacancy of the see or of the absence or disability of the bishop shall suffice. The trustees of an incorporated Roman Catholic church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar-general or administrator of such diocese. The trustees of an incorporated Ruthenian Catholic church of the Greek rite shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the Ruthenian Greek Catholic bishop of the diocese to which such church belongs or, in case of his absence or inability to act, without the consent of the vicar-general of such bishop or of the administrator of such diocese. The petition of the trustees of an incorporated Protestant Episcopal church or Roman Catholic church shall, in addition to the matters required by article four of the general corporation law to be set forth therein, set forth that this section has also been complied with. But lots, plats or burial permits in a cemetery owned by a religious corporation may be sold without applying for or obtaining leave of the court. No cemetery lands of a religious corporation shall be mortgaged while used for cemetery purposes. Except as otherwise provided in this chapter in respect to a religious corporation of a specified denomination, any solvent religious corporation may, by order of the supreme court, obtained as above provided in proceedings to sell, mortgage or lease real property, convey the whole or any part of its real property to another religious corporation, for a consideration of one dollar or other nominal consideration, and for the purpose of applying the provisions of article four of the general corporation law, a proposed conveyance for such consideration shall be treated as a sale, but it shall not be necessary to show, in the petition or otherwise, nor for the court to find, that the pecuniary or proprietary interest of the grantor corporation will be promoted thereby; and the interests of such grantor shall be deemed to be promoted if it appears that religious or charitable objects generally are conserved by such conveyance; provided, however, that such an order shall not be made if tending to impair the claim or remedy of any creditor. If a sale or mortgage of any real property of any such religious corporation has been heretofore or shall be hereafter made and a conveyance or mortgage executed and delivered without the authority of a court of competent jurisdiction, obtained as required by law, or not in accordance with its directions, the court may, thereafter, upon the application of the corporation, or of the grantee or mortgagee in any such conveyance or mortgage or of any person claiming through or under any such grantee or mortgagee, upon

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such notice to such corporation, or its successor, and such other person or persons as may be interested in such property, as the court may prescribe, confirm said previously executed conveyance or mortgage, and order and direct the execution and delivery of a confirmatory deed or mortgage, or the recording of such confirmatory order in the office where deeds and mortgages are recorded in the county in which the property is located; and upon compliance with the said order such original conveyance or mortgage shall be as valid and of the same force and effect as if it had been executed and delivered after due proceedings had in accordance with the statute and the direction of the court. But no confirmatory order may be granted unless the consents required in the first part of this section for a Protestant Episcopal or Roman Catholic church have first been given by the prescribed authority thereof, either upon the original application or upon the application for the confirmatory order. (*Amended by L. 1912, ch. 290, L. 1913, ch. 128 and L. 1917, ch. 353, in effect May 3, 1917.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 11, as amended by L. 1896, ch. 366; L. 1900, ch. 521; L. 1901, ch. 222; L. 1902, ch. 208, and L. 1908, ch. 363; originally revised from L. 1813, ch. 60, § 1, subd. 15, as amended by L. 1868, ch. 803 (Episcopal); L. 1813, ch. 60, § 11, as amended by L. 1890, ch. 424 (corporations generally); L. 1842, ch. 215, § 1 (corporations generally); L. 1879, ch. 310, § 1 (corporations generally).

References.—Proceedings for sale of corporate real property. See General Corporations Law, §§ 70–76.

Application.—This section refers only to the procedure necessary in the case of a voluntary sale or disposition by a religious corporation of its own property. The fact that a religious corporation is the holder of one or more undivided shares of property does not forbid the maintenance of an action in partition. *New York Home M. Society v. First F. Baptist Church* (1911), 73 Misc. 128, 130 N. Y. Supp. 879.

Object.—The object of the statute in requiring a religious corporation to obtain leave of the court before conveying its real property, is to protect the society and its members from loss through unwise bargains, and to prevent perversion of the association's property. *Muck v. Hitchcock* (1914), 212 N. Y. 283, 106 N. E. 75.

At common law a religious corporation could not sell its real property without leave of court. *Muck v. Hitchcock* (1912), 149 App. Div. 323, 134 N. Y. Supp. 271, revd. (1914), 212 N. Y. 283, 106 N. E. 75.

Not applicable to foreign corporations.—The words of this section prohibiting religious corporations from selling their real property without leave of the court should be limited to domestic corporations. The prohibition does not extend to foreign corporations. *Muck v. Hitchcock* (1914), 212 N. Y. 283, 106 N. E. 75; *In re Hefron Co.* (1914), 216 Fed 642, 648.

Construction is binding on Federal Court.—*In re Hefron Co.* (1914), 216 Fed 642, 648.

Power to sell or mortgage real property is dependent on statute. *Mad. Ave. Bap. Ch. v. Bap. Ch. in Olive St.* (1871), 46 N. Y. 131; *Bogardus v. Trinity Ch.* (1833), 4 Paige 178, affd. (1835), 15 Wend. 111; *De Ruyter v. St. Peter's Ch.* (1848), 3 Barb. Ch. 119, affd. (1850), 3 N. Y. 238. Formerly held otherwise as to mortgage. *Manning v. Moscow, etc., Soc.* (1858), 27 Barb. 52; *Battell v. Torrey* (1875),

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65 N. Y. 294; *Riggs v. Parsell* (1901), 66 N. Y. 193. But see *Matter of Church of the Messiah* (1890), 25 Abb. N. C. 354, 12 N. Y. Supp. 489, and note.

Removal of edifice from lot to another. Consent of court not necessary. *Matter of Second Bap. Soc.* (1851), 20 How. Pr. 324.

Absolute sale of pew.—Consent of court necessary. *Matter of Ref. Ch. in Saugerties* (1853), 16 Barb. 237.

Leave of court to sell or mortgage is not required where lands are devised to a religious corporation which the testator, before his death, contracted to sell and convey. *Edelstein v. Hays* (1906), 50 Misc. 130, 100 N. Y. Supp. 403.

Sufficiency of consideration.—Sale to another religious corporation may be ordered on the latter assuming the incumbrances thereon, and the floating debts of grantor corporation. *Lynch v. Pfeiffer* (1886), 38 Hun 603, *affd.* (1888), 110 N. Y. 33, 17 N. E. 402.

Trustees may make application.—*Matter of St. Ann's Ch.* (1862), 14 Abb. Pr. 424; *The Mad. Ave. Bap. Ch. v. Bap. Ch. in Olive St.* (1871), 46 N. Y. 131.

Disposition of proceeds.—Order should direct. *Matter of Reformed Ch. in Saugerties* (1853), 16 Barb. 237; *Matter of Ch. of the Messiah* (1890), 25 Abb. N. C. 354, 12 N. Y. Supp. 489.

Executory contracts may be enforced after consent is procured. *Bowen v. The Irish Pres. Congregation* (1860), 19 Super. (6 Bosw.) 245; *Congregation Beth. Elohim v. Central Pres. Ch.* (1871), 10 Abb. Pr. N. S. 484.

Proceeding to sell church property; stay.—Application was made for an order vacating a stay of proceedings instituted by a religious corporation for the purpose of selling church property. Two actions, one in ejectment, one in equity, are pending and involve the conflicting claims of the parties. Under all the circumstances, *held*, that the court should not vacate the stay, although circumstances may hereafter justify it in doing so. *Matter of Westminster Presbyterian Church* (1915), 168 App. Div. 823, 154 N. Y. Supp. 361.

Rescinding sale.—Where a religious corporation sells its real estate without leave of court it is entitled to a decree rescinding sale upon offering to return the consideration. *Associate Presbyterian Congregation v. Hanna* (1906), 113 App. Div. 12, 98 N. Y. Supp. 1082.

Action to set aside sale.—*Watkins v. Wilcox* (1876), 66 N. Y. 654.

§ 13. **Consolidation of incorporated churches.**—Two or more incorporated churches may enter into an agreement, under their respective corporate seals, for the consolidation of such corporation, setting forth the name of the proposed new corporation, the denomination, if any, to which it is to belong, and if the churches of such denomination have more than one method of choosing trustees, by which of such methods the trustees are to be chosen, the number of such trustees, the names of the persons to be the first trustees of the new corporation, and the date of its first annual corporate meeting. Such agreement shall not be valid unless approved by the governing body of the denomination, if any, to which each church belongs, having jurisdiction over such church. Each corporation shall thereupon make a separate petition to the supreme court for an order consolidating the corporations, setting forth the denomination, if any, to which the church belongs, that the consent of the governing body to the consolidation, if any, of that denomination having jurisdiction over such church has been obtained, the agreement therefor, and a statement of all the property and liabilities and

the amount and sources of the annual income of such petitioning corporation. In its discretion the court may direct that notice of the hearing of such petition be given to the parties interested therein in such manner and for such time as it may prescribe. After hearing all the parties interested, present and desiring to be heard, the court may make an order for the consolidation of the corporations on the terms of such agreement and such other terms and conditions as it may prescribe, specifying the name of such new corporation and the first trustees thereof, and the method by which their successors shall be chosen and the date of its first annual corporate meeting. When such order is made and duly entered, the persons constituting such corporations shall become an incorporated church by, and said petitioning churches shall become consolidated under, the name designated in the order, and the trustees therein named shall be the first trustees thereof, and the future trustees thereof shall be chosen by the method therein designated, and all the estate, rights, powers and property of whatsoever nature belonging to either corporation shall without further act or deed be vested in and transferred to the new corporation as effectually as they were vested in or belonged to the former corporations; and the said new corporation shall be liable for all the debts and liabilities of the former corporations in the same manner and as effectually as if said debts or liabilities had been contracted or incurred by the new corporation. A certified copy of such order shall be recorded in the book for recording certificates or incorporation in each county clerk's office in which the certificate of incorporation of each consolidating church was recorded; or if no such certificate was so recorded, then in the clerk's office of the county in which the principal place of worship or principal office of the new corporation is, or is intended to be, situated.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 12, as amended by L. 1896, ch. 56; originally revised from L. 1874, ch. 37; L. 1875, ch. 209; L. 1876, ch. 176, § 3, as amended by L. 1880, ch. 167, and § 4.

Application of section.—Authorizes consolidations of corporations organized in good faith, not merely for purpose of consolidation. *Matter of Meth. Epis. Soc. v. Perry* (1889), 51 Hun 104, 4 N. Y. Supp. 723.

A membership corporation formed under L. 1848, ch. 319, cannot consolidate with a religious corporation; and a conveyance to such a consolidated corporation does not vest title. *Selkir v. Klein* (1906), 50 Misc. 194, 100 N. Y. Supp. 449.

What churches may consolidate.—Statute does not seem to authorize the consolidation of a denominational church with an undenominational one. *Stokes v. Phelps Mission* (1888), 47 Hun 570.

Discretion of court.—*Matter of Meth. Epis. Soc. v. Perry* (1889), 51 Hun 104, 4 N. Y. Supp. 723.

Injunction will lie to restrain a consolidation not in accordance with the statute. *Davis v. Congregation Tephila Israel* (1899), 40 App. Div. 424, 57 N. Y. Supp. 1015; *Chevra Madrash v. Makaver Chevra* (1899), 66 N. Y. Supp. 355. But not otherwise. *Maclaury v. Hart* (1890), 121 N. Y. 636, 24 N. E. 1013.

§ 14. **Judicial investigation of amount of property of religious corporations.**—The supreme court at a special term, held in the judicial district

in which the principal place of worship or of holding corporate meetings of a religious corporation is situated, may require such corporation to make and file an inventory of its property, verified by its trustees or a majority of them, on the written application of the attorney-general, stating that, from his knowledge, or on information and belief, the value of the property held by such corporation exceeds the amount authorized by law. On presentation of such application, the court shall order that a notice of at least eight days, together with a copy of the application, be served upon the trustees of the corporation, requiring them to show cause at a time and place therein specified why they should not make and file such inventory and account. If, on the hearing of such application, no good cause is shown to the contrary, the court may make an order requiring such inventory or account to be filed, and may also proceed to take and state the amount of property held by the corporation, and may appoint a referee for that purpose; and when such account is taken and stated, after hearing all the parties appearing on the application, the court may enter an order determining the amount of property so held by the corporation and its annual income, from which order an appeal may be taken by any party aggrieved as from a judgment of the supreme court in an action tried therein before a court without a jury. No corporation shall be required to make and file more than one inventory and account in any one year, or to make a second account and inventory while proceedings are pending for the statement of an account under this section.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 13; originally revised from L. 1813, ch. 60, §§ 10, 15; L. 1814, ch. 1, § 6; L. 1842, ch. 153; L. 1850, ch. 122, §§ 1, 3 (corporations generally); L. 1863, ch. 45, § 1, subd. 3 (Roman Catholic); L. 1871, ch. 12, § 1, subd. 3 (Greek).

See *Robertson v. Bullions* (1854), 11 N. Y. 543; *Kniskern v. Lutheran Church* (1844), 1 Sandf. Ch. 439.

§ 15. Corporations with governing authority over churches.—An unincorporated diocesan convention, presbytery, classis, synod, annual conference, or other ecclesiastical governing body having jurisdiction over several churches, may at a stated meeting thereof, determine to become incorporated by a designated name, and may by a plurality vote, elect not less than three nor more than nine persons to be the first trustees of such corporation. The presiding officer and clerk of such governing body shall execute and acknowledge a certificate stating that such proceedings were duly taken as herein provided, the name by which such corporation is to be known, and the names of such first trustees. On filing such certificate the members of such governing body and their successors shall be a corporation by the name stated in the certificate, and the persons named as trustees therein shall be the first trustees thereof.

The trustees of every incorporated governing body and their successors shall hold their offices during the pleasure of such body, which may remove them and fill vacancies in accordance with its rules and regulations. Such

corporation may take, administer and dispose of property for the benefit of such governing body, or of any parish, congregation, society, church, mission, religious, benevolent, charitable or educational institution existing or acting under it.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 14; originally revised from L. 1875, ch. 381, §§ 1, 2, 4 (Presbyterian); L. 1876, ch. 110, §§ 1, 2, 4 (churches and societies generally); L. 1886, ch. 209 (Unitarian).

Incorporators.—A corporation organized under this section may be organized by members of corporations incorporated in other states. Rept. of Atty. Genl. (1912) 393.

The Trustees of the Presbytery of New York constitute an ecclesiastical governing body having control over the several Presbyterian churches in the county of New York. *Westminster Church v. Presbytery of N. Y.* (1914), 211 N. Y. 214, 105 N. E. 199.

See *Perry v. Board of Missions, etc., of Albany* (1894); 102 N. Y. 99, 6 N. E. 116.

Section cited.—*Westminster Presbyterian Church v. Trustees of Presbytery* (1911), 142 App. Div. 855, 856, 127 N. Y. Supp. 836, appeal dis. (1911), 202 N. Y. 581, 96 N. E. 1134.

§ 16. **Property of extinct churches.**—Such incorporated governing body may decide that a church, parish, or society in connection with it or over which it has ecclesiastical jurisdiction, has become extinct, if it has failed for two consecutive years next prior thereto, to maintain religious services according to the discipline, customs and usages of such governing body, or has had less than thirteen resident attending members paying annual pew rent, or making annual contribution toward its support, or in case of a parish of the Protestant Episcopal Church, if such parish has ceased for two consecutive years next prior thereto, to have a sufficient number of men qualified to elect or to serve as wardens and vestrymen therein, and may take possession of the temporalities and property belonging to such church, parish or religious society, and manage the same; or may, in pursuance of the provisions of law relating to the disposition of real property by religious corporations, sell or dispose of the same and apply the proceeds thereof to any of the purposes to which the property of such governing religious body is devoted, and it shall not divert such property to any other object. And for the purpose of obtaining a record title to the land and the church edifice, or other buildings thereon, by such incorporated governing body, the surviving trustee or trustees of said extinct church, or if there be no surviving trustee then a surviving member of said extinct church, may, without a consideration being paid therefor by such incorporated governing body, convey to it said land and church edifice, or other buildings thereon, subject, however, to an order of the supreme or county court based upon a petition reciting that said church has become extinct; the names of its surviving trustee or trustees, and the names of its members, who must have given their consent to the making of said conveyance. Upon the recital of said facts in said petition the court shall have jurisdiction to grant an order allowing said conveyance to be made

without a consideration; and should there be no surviving members, as well as no surviving trustee of said extinct church, said petition may be made by an officer of such incorporated governing body, in which event the court, upon a recital of said fact, shall have jurisdiction to appoint a suitable person as trustee for the purpose of making said conveyance. And in case of a Reformed Church of America, Dutch Reformed Church, or Reformed Dutch Church in the United States of America or the United Reformed Dutch and Lutheran Church of America or a parish of the Protestant Episcopal Church should either such surviving members or such surviving trustee of said extinct church refuse to act and sign said petition after request by an officer of said governing body of said last-named churches personally made by such officer, then said petition may be made by an officer of such incorporated governing body and in that event the court shall have jurisdiction and may appoint a suitable person as trustee for the purpose of making said conveyance. And in the case of said last-named Reformed churches, or of a parish of the Protestant Episcopal Church, the trustees of any such extinct church, the treasurer thereof or any person acting in either of said capacities may be required to show cause before the supreme court at a special term thereof held in the judicial district in which said church shall be located why they should not be required to give an account of all moneys and property of said church which they shall have in their hands or under their control and in case of their failure to show such cause they be required to account before said court for all the properties and moneys of the said church which shall be in their hands or under their control, and after the payment of all the claims against such church, if any, and the expenses of such proceeding, if it shall further appear that none of such property in the hands of said persons is required for the further support or maintenance of said church, said money and proceeds thereof shall be directed to be paid and turned over to said governing religious body to apply to the purposes to which the property of such governing body is devoted. An application for such order to show cause shall be made by a verified petition, which petition may be made by said governing body of said church or any officer thereof. Where a proceeding is instituted under this section for the sale of the real property of an extinct religious corporation, a compliance with subdivisions four, five, seven, eight and nine of section seventy-one of "An act relating to corporations generally, constituting chapter twenty-three of the consolidated laws," shall be unnecessary, and such proceedings shall be in all respects valid without a compliance with said subdivisions. The New York Eastern Christian Benevolent and Missionary Society, shall be deemed the governing religious body of any extinct or disbanded church of the christian denomination situated within the bounds of the New York Eastern Christian Conference; and the New York Christian Association, of any other church of the christian denomination, and any other incorporated conference shall be deemed the governing religious body of any such church situated within its bounds. By

christian denomination is meant only the denomination specially termed "christian," in which the bible is declared to be the only rule of faith, christian their only name, and christian character their only test of fellowship, and in which no form of baptism is made a test of christian character. (*Amended by L. 1909, ch. 408, L. 1910, ch. 185, L. 1916, ch. 485, and L. 1917, ch. 200, in effect Apr. 17, 1917.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 15, as amended by L. 1896, ch. 336; L. 1896, ch. 337; L. 1897, ch. 238, and L. 1905, ch. 193; originally revised from L. 1875, ch. 381, § 3, as amended by L. 1877, ch. 177 (Presbyterian); L. 1876, ch. 110, § 3, as amended by L. 1882, ch. 23 (churches and societies generally); L. 1885, ch. 431 (Congregational); L. 1877, ch. 100 (Christian).

Application.—The provision of the statute relating to extinct churches, which have failed to hold services for two consecutive years, etc., has no application to a case where the governing body unlawfully took possession of the corporate property and thus enforced non-user. *Westminster Church v. Presbytery of N. Y.* (1914), 211 N. Y. 214, 105 N. E. 199.

"Pecuniary and spiritual turmoil," is not a statutory ground for the dissolution of a church which presumably intends to continue to observe its ecclesiastical and corporate purposes. *Trustees v. Westminster Presby. Church* (1910), 67 Misc. 317, 122 N. Y. Supp. 309, revd. (1911), 142 App. Div. 876, 127 N. Y. Supp. 851.

Possession of church property on dissolution.—On dissolving the congregation of an incorporated Presbyterian church so that it has neither members nor trustees of its own, the Trustees of Presbytery is entitled to the possession of the church property as against the church corporation or its former members. *Westminster Presbyterian Church v. Trustees of Presbytery* (1911), 142 App. Div. 855, 127 N. Y. Supp. 836, appeal dis. (1911), 202 N. Y. 581, 96 N. E. 1134.

The Trustees of Presbytery is the incorporated governing body of the Presbyterian churches within its territory and has authority to declare a congregation of the said church extinct. *Westminster Presbyterian Church v. Trustees of Presbytery* (1911), 142 App. Div. 855, 127 N. Y. Supp. 836, appeal dis. (1911), 202 N. Y. 581, 96 N. E. 1134.

Injunction.—Where there is an abandonment of a place of worship without the consent of the Presbytery to which it was the duty of the church to surrender its property upon dissolution, and the court has already held that the church had no right to sell its property, it is error to sustain a demurrer to a complaint, which seeks to enjoin a transfer of the church's property, upon the ground that the only authority to take charge of the church's property is under this section. *Trustees of Presbytery v. Westminster Presbyterian Church* (1911), 142 App. Div. 876, 127 N. Y. Supp. 851.

§ 17. Property of extinct Free Baptist churches.—The property both real and personal, belonging to or held in trust for any Free Baptist church, or Free Baptist religious society organized under the laws of the state of New York, that has become, or shall become extinct, shall vest in and become the property of the Central association existing under the laws of the state of New York, and its successors and assigns; provided that this section shall not affect the reversionary interests of any person in such property, nor the interests of any incorporated association; and any Free Baptist church or Free Baptist religious society becoming extinct or about to disband or disorganize, may by a vote of two-thirds of its members present and

voting therefor at a meeting regularly called for that purpose assign, transfer, grant and convey all its temporalities to and place the same in the possession of the Central association existing under the laws of the state of New York.

A Free Baptist church or Free Baptist religious society which has failed for two consecutive years next prior thereto to maintain religious services according to the custom and usages of Free Baptist churches, or has less than thirteen resident attending members, paying annual pew rental or making annual contributions towards its support, may be declared extinct in the following manner viz.: Upon such notice as the court may prescribe, and upon application made by petition, stating fully the facts in the case, and on evidence being furnished that the said Free Baptist church or Free Baptist religious society has ceased to hold religious services in and use said property for religious worship or service for a term of two years previous to such application, the supreme court, at a term thereof held in the judicial district where such property is situated, may grant an order declaring such church or society extinct, and thereon direct that all its temporalities shall be transferred to, and thereupon shall be taken possession of by the Central association of the state of New York, or directing that the same be sold in the manner directed by said order, and that the proceeds thereof, after the payment of the debts of such church or society, be paid over to the Central association of the state of New York. All property and proceeds from the sale of property so transferred to said association shall be used and applied for the purposes for which said Central association of the state of New York was organized and shall not be directed to any other purpose.

The First Free Will Baptist church of the city of New York, located in the borough of Manhattan, shall in no way be amenable to the provisions of this section.

Source.—L. 1896, ch. 308, §§ 1-3, as amended by L. 1898, ch. 248.

§ 18. **Dissolution of religious corporations.**—Whenever any religious corporation shall cease to act in its corporate capacity and keep up the religious services; it shall be lawful for the supreme court of this state, upon the application of a majority of the trustees thereof, except in the county of New York, in case said court shall deem it proper so to do, to order and decree a dissolution of such religious corporation, and for that purpose to order and direct a sale and conveyance of any and all property belonging to such corporation, and after providing for the ascertaining and payment of the debts of such corporation, and the necessary costs and expenses of such sale and proceedings for dissolution, so far as the proceeds of such sale shall be sufficient to pay the same; such court may order and direct any surplus of such proceeds remaining after paying such debts, costs and expenses, to be devoted and applied to any such religious, benevolent,

or charitable object or purposes as the said trustees may indicate by their petition and the said court may approve.

Such application to said court shall be made by petition, duly verified by said trustees, which petition shall state the particular reason or causes why such sale and dissolution are sought; the situation, condition and estimated value of the property of said corporation, and the particular object or purposes to which it is proposed to devote any surplus of the proceeds of such property; and such petition shall, in all cases, be accompanied with proof that notice of the time and place of such intended application to said court, has been duly published once in each week for at least four weeks successively, next preceding such application, in a newspaper published in the county where such corporation is located.

In case there shall be no trustees of such religious corporation residing in the county in which such corporation is located, such application may be made, and such proceedings taken, by a majority of the members of such religious corporation residing in such county.

Source.—L. 1872, ch. 424, §§ 1-3.

A decree of dissolution of a church in the county of New York issued by the ecclesiastical governing body to which it was subject extends only to the spiritual side of the church. The governing body has no power in that county to dissolve the corporation, considered as a legal entity. *Westminster Church v. Presbytery of N. Y.* (1914), 211 N. Y. 214, 105 N. E. 199.

Section cited.—*Trustees of Presbytery v. Westminster Presbyterian Church* (1911), 142 App. Div. 855, 876, 127 N. Y. Supp. 836, 851.

§ 19. Corporations for organizing and maintaining mission churches and Sunday schools.—Ten or more members of two or more incorporated churches may become a corporation for the purpose of organizing and maintaining mission churches and Sunday schools, and of acquiring property therefor, by executing a certificate stating the name of such corporation, the city in which its principal office or church or school is or is intended to be located; the number of trustees to manage its affairs, which shall be three, six or nine, and the names of the trustees for the first year of its existence, which certificate shall be acknowledged or proved and filed as hereinbefore provided. Whenever a mission church established by such corporation becomes self-sustaining, such mission church may become incorporated and shall be governed under the provisions of this chapter for the incorporation and government of a church of the religious denomination to which such mission church belongs, and thereon such parent corporation may convey to such incorporated church the property connected therewith.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 16, as amended by L. 1896, ch. 336; section was new in former Religious Corporations Law.

References.—Place of filing certificate, § 3, ante. Qualifications of incorporators, name, and generally as to certificate. See General Corporation Law, §§ 4-9.

§ 20. Corporations for acquiring parsonages for presiding elders and camp-meeting grounds.—The presiding elder and a majority of the district

stewards residing within a presiding elder's district, erected by an annual conference of the Methodist Episcopal denomination, may become incorporated for the purposes of acquiring, maintaining and improving real property to be used either as a parsonage for the presiding elder of such district or as a camp ground for camp-meeting purposes, or for both of such objects by executing, acknowledging and filing a certificate stating the name and object of the corporation to be formed, the name of such annual conference, and of such presiding elder's district, the names, residences and official relations to such district of the signers thereof, the number of trustees of such corporation, which shall be three or some multiple of three not more than twenty-one, the names of such trustees, designating one-third to hold office for three years, one-third to hold office for two years, and one-third to hold office for one year. On filing such certificate the presiding elder and all the stewards of such district by virtue of their respective offices, shall be a corporation by the name and for the purposes therein stated, and the persons therein named shall be the first trustees thereof. The presiding elder and stewards of any other adjoining presiding elder's district, in this or any other state, may become members of any such corporation, at the time of its formation or any time thereafter, with the consent of such corporation, which has for its sole object, or for one of its objects, the acquiring, maintaining and improving of real property as a camp ground for camp-meeting purposes, if such presiding elder and a majority of such stewards sign, acknowledge and cause to be filed in the office of the secretary of state, a certificate stating such object, the name of such adjoining district, and the names, residences and official relations to such district of the signers thereof, with the consent of the original corporation indorsed thereon.

If such a corporation, which has for its sole object or one of its objects, the acquisition and maintenance of camp grounds for camp-meeting purposes, is composed of the presiding elders and the district stewards of more than one presiding elder's district, the number of such trustees shall be apportioned equally, as near as may be, between the different districts, and the presiding elder and district stewards of such district shall elect the number of trustees so apportioned to such district, and the remainder, if any, over an equal division of the trustees, shall be elected by all the members of the corporation.

A person holding property in trust for the purposes of a parsonage for the presiding elder of a district, and his successors in office, or for camp-meeting purposes, for the Methodist Episcopal denomination, may convey the same to a corporation formed for the purpose of acquiring such property within the district in which the property is situated. Meetings held under the direction of such a corporation upon camp grounds owned by it shall be deemed religious meetings, within the provisions of laws relating to disturbances of religious meetings and the trustees of such a corporation shall have the powers of peace officers with relation thereto. Whenever

such a corporation or any camp ground association owns land bordering upon any navigable waters, to be used for camp-meeting purposes only, such corporation or association may regulate or prohibit the landing of persons or vessels at the wharves, piers or shores upon such grounds during the holding of religious services thereon.

If the trustees of any such corporation heretofore incorporated have not been classified, so that the terms of office of one-third of their number expire each year, the trustees of such corporation shall be elected annually by the members thereof; but if the trustees of any such corporation have been so classified, one-third of the total number of trustees shall be elected annually to hold office for three years. Such a corporation heretofore incorporated may, by a majority vote, at an annual meeting, or at a special meeting duly called therefor, determine to change the number of its trustees to three, or some multiple thereof, not more than twenty-one. On such determination a majority of the trustees shall sign, acknowledge and file in the offices where the original certificate of such corporation is filed, a supplemental certificate, specifying such reduction or increase; and thereon the number of trustees shall be the number stated in such certificate. If the number of trustees is increased, the corporation shall elect, at its next annual meeting, a sufficient number of trustees to hold office for one, two and three years, respectively, so that the terms of office of one-third of the whole number of trustees of such corporation shall expire at each annual meeting thereafter. If the number is reduced, the corporation shall thereafter elect at its annual meetings one-third of the number of trustees specified in such supplemental certificate, but the trustees in office when such certificate is filed shall continue in office until the expiration of their terms, respectively.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 17; originally revised from L. 1867, ch. 265, as amended by L. 1868, ch. 784; L. 1874, ch. 26, as amended by L. 1894, ch. 72.

References.—Disturbance of meetings, a misdemeanor, Penal Law, §§ 2071, 2072.

§ 21. Corporations for acquiring camp-meeting grounds for the Reformed Methodist denomination.—The visiting elder of a visiting elder's district, erected * by an annual conference of the Reformed Methodist denomination, and three members or more in good and regular standing of three or more churches of such denomination, may become incorporated for the purposes of acquiring, maintaining and improving real property, to be used as a camp ground for camp-meeting purposes, by executing, acknowledging and filing a certificate stating the name and object of the corporation to be formed, the name of such annual conference, and of such visiting elder's district, the names, residences and particular church membership of the signers thereof, the number of trustees of such corporation, which shall be three, or some multiple of three, not more than twenty-one, the names of

* So in original.

such trustees, designating one-third to hold office for three years, one-third to hold office for two years, and one-third to hold office for one year. On filing such certificate, the visiting elder and the trustees named therein, and their successors in office, shall be a corporation by the name and for the purposes therein stated. A person holding property in trust for camp-meeting purposes for the Reformed Methodist denomination, may convey the same to a corporation formed for the purpose of acquiring such property within the visiting elder's district where the property is situated. Meetings held under the direction of such a corporation upon camp grounds owned by it, shall be deemed religious meetings within the religious law, relating to the disturbance of religious meetings, and the trustees of such a corporation shall have the power of peace officers with relation thereto. Whenever such a corporation, or any camp ground association of the Reformed Methodist denomination, owns land bordering upon any navigable water to be used for camp-meeting purposes only, such corporation or association may regulate or prohibit the landing of persons or vessels at the wharves, piers or shores upon such grounds during the holding of religious services thereon.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 23, as added by L. 1903, ch. 314.

§ 21-a. **Corporations for acquiring lands for parsonage or camp-meeting purposes for the Free Methodist denomination.**—The district elder and a majority of the stewards residing in the district elder's district, elected by an annual conference of the Free Methodist Church denomination, may become incorporated, for the purpose of acquiring, maintaining and improving real property, to be used for the purpose of a district elder's parsonage or for camp-meeting purposes, or for both such purposes, by acknowledging and filing a certificate, stating the name and object of the corporation, the name of such annual conference, and of such district elder's district, the names, residences and official relations to such district of the signers thereof, the number of trustees of said incorporation, which shall be three, or some multiple of three, not to exceed twelve, the names of such trustees, designating one-third to hold office for three years, one-third to hold office for two years and one-third to hold office for one year.

On filing such certificate, the district elder and all the stewards of such district, by virtue of their respective offices, shall be a corporation by the name, and for the purposes therein stated, and the persons therein named as trustees shall be the first trustees thereof.

A person holding property in trust for the purpose of a parsonage for the district elder of the district, or for camp-meeting purposes, and his successors in office, for the Free Methodist church denomination, may convey the same to a corporation organized for this purpose of acquiring property within the district in which such property is situated.

Meetings held under the direction of such corporation, upon camp

grounds owned by such corporation, shall be deemed to be religious meetings, within the provisions of the law relating to the disturbance of religious meetings, and the trustees shall have the powers of peace officers with relation thereto.

When such corporation or camp ground association owns land bordering on any navigable waters to be used for camp-meeting purposes only, such corporation or association may regulate or prohibit the landing of persons or vessels at the wharves, piers or shores upon such ground during the holding of religious services thereon. (*Added by L. 1915, ch. 209.*)

§ 22. Establishing and maintaining a home for aged poor.—An incorporated church or congregation in this state, either by itself or in conjunction with other incorporated churches or congregations, shall have power to establish and maintain by its or their trustees or other officers, as part of its or their regular church and charitable work, a home for the aged poor of its or their membership or congregation and may take and hold as joint tenants, tenants in common or otherwise, by conveyance, donation, bequest or devise, real and personal property for such purpose, and may purchase or erect suitable buildings therefor. Any such church or congregation, either by itself or in conjunction with other incorporated churches or congregations may take and hold any grant, donation, bequest or devise of real or personal property heretofore made, upon trust, and apply the same or the income thereof under the direction of the trustees or other officers having charge of the temporalities of such church, or churches, or congregation, or congregations, for the purpose of establishing or maintaining such a home, and for the erection, preservation, repair or extension of any buildings for such purpose, upon such terms and conditions and subject to such conditions, limitations and restrictions as shall be contained in the deed, will or other instrument or conveyance by which the property is given, transferred or conveyed.

Source.—L. 1895, ch. 607, §§ 1, 2, as amended by L. 1898, ch. 473.

References.—Exemption of property from taxation, Tax Law, § 4, sub. 7. Inspection and supervision by state board of charities, State Charities Law, § 10.

§ 23. Powers of churches created by special laws.—If a church be incorporated by special law, it and its trustees shall have, in addition to the powers conferred on it by such law, all the powers and privileges conferred on incorporated churches and the trustees thereof respectively by the provisions of this article, and also all the powers and privileges conferred by this chapter on churches of the same denomination or of the like character, and on the trustees thereof respectively.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 18; originally revised from L. 1871, ch. 776.

§ 24. Government of churches incorporated prior to January first, eighteen hundred and twenty-eight.—Any provision of this chapter shall not be deemed to apply to any church incorporated under any general or

special law, prior to January first, eighteen hundred and twenty-eight, if such provision is inconsistent with or in derogation of any of the rights and privileges of such corporation as they existed under the law by or pursuant to which such corporation was formed, unless such corporation subsequent to such date, shall have lawfully reincorporated under a law enacted since the first day of January, eighteen hundred and twenty-eight, or unless the trustees of such corporation shall, by resolution, determine that the provisions of this chapter applying to churches of the same denomination and to the trustees thereof shall apply to such church, and unless such resolution shall be submitted to the next ensuing annual meeting of such church, and ratified by a majority of the votes of the qualified voters present and voting thereon. Notice of the adoption of such resolution and of the proposed submission thereof for ratification, shall be given with the notice of such annual meeting, and in addition thereto, mailed to each member of such church corporation at his last known post-office address, at least two weeks prior to such annual meeting, and published once a week for two successive weeks immediately preceding such meeting in a newspaper, if any, published in the city, village or town in which the principal place of worship of such corporation is located, and otherwise in a newspaper published in an adjoining town. If such resolution is so ratified, the trustees of such church shall cause a certificate setting forth a copy of such resolution, its adoption by the board of trustees and its due ratification by the members of such corporation, to be filed in the office of the clerk of the county in which the principal place of worship of such corporation is located. Such county clerk shall cause such certificate to be recorded in the book in which certificates of incorporation of religious corporations are recorded in pursuance of law.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 19, as added by L. 1896, ch. 336.

Application to Trinity Church.—Burke v. Rector, etc., Trinity Church (1909), 63 Misc. 43, 45, 117 N. Y. Supp. 255, *affd.* (1909), 132 App. Div. 930, 117 N. Y. Supp. 1130.

See *People ex rel. Sturges v. Keese* (1882), 27 Hun 483.

§ 25. **Pastoral relation.**—No provision of this chapter authorizes the calling, settlement, dismissal or removal of a minister, or the fixing or changing of his salary, and a meeting of a church corporation for any such purpose shall be called, held, moderated, conducted, governed and notice of such meeting given and person to preside thereat ascertained and the qualification of voters thereat determined, not as required by any provision of this chapter but only according to the aforesaid laws and regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the church corporation is connected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 20, as added by L. 1899, ch. 720.

L. 1909, ch. 53.

Protestant episcopal churches.

§§ 26, 27, 40.

§ 26. **Worship.**—No provision of this chapter authorizes the fixing or changing of the times, nature or order of public or social or other worship of any church, in any other manner or by any other authority than in the manner and by the authority provided in the laws, regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the church corporation is connected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 21, as added by L. 1899, ch. 720.

§ 27. **Reservation as to Baptist and Congregational churches.**—Sections twenty-five and twenty-six are not applicable to a Baptist church, a Congregational church or to any other religious corporation having a congregational form of government.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 22, as added by L. 1899, ch. 720.

ARTICLE III.

PROTESTANT EPISCOPAL PARISHES OR CHURCHES.

Section 40. Meeting for incorporation.

41. Certificate of incorporation.
42. Corporate trustees, vestry; powers and duties thereof.
43. Annual elections and special meetings of incorporated Protestant Episcopal parishes.
44. Changing the number of vestrymen of Protestant Episcopal parishes hereafter incorporated.
45. Changing date of annual election, number and terms of office of vestrymen and terms of office of churchwardens in Protestant Episcopal churches heretofore incorporated.
46. Changing the qualifications of voters and the qualifications of wardens and vestrymen.
47. Free churches in communion with the Protestant Episcopal church.

§ 40. **Meeting for incorporation.**—Notice of a meeting for the purpose of incorporating an unincorporated Protestant Episcopal parish or congregation, and of electing the first churchwardens and vestrymen thereof, shall specify the object, time and place of such meeting, and shall be made public for at least two weeks prior to such meeting, either by open reading of such notice in time of divine service, at the usual place of worship of such parish or congregation, or by posting the same conspicuously on the outer door of such place of worship. Only men of full age who have been regular attendants at the worship of such parish or congregation and contributors to the support thereof for one year next prior to such meeting, or since the establishment of such parish or congregation, shall be qualified to vote at such meeting. The presence of at least six persons qualified to vote thereat shall be necessary to constitute a quorum of such meeting. The

action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present. The officiating minister, or if there be none, or he shall be necessarily absent, any other person qualified to vote at the meeting, who is called to the chair, shall preside thereat. Such presiding officer shall receive the votes, be the judge of the qualifications of voters, and declare the result of the votes cast at such meeting. The polls of the meeting shall remain open for one hour or longer, in the discretion of the presiding officer, or if required by a vote of a majority of the voters present. The meeting shall decide whether such unincorporated parish or congregation shall become incorporated. If such decision be in favor of incorporation, such meeting shall decide upon the name of the proposed corporation; what secular day of the week beginning with the first Sunday in Advent, shall be the date of the regular annual election; whether the vestrymen thereof shall be three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four; and shall elect by ballot from the persons qualified to be voters thereat, who have been baptized, one-third of the number of vestrymen so decided upon to hold office until the first annual election to be held thereafter, one-third of such number, to hold office until one year after such annual election, and one-third of such number, to hold office until two years after such annual election; and shall elect from such qualified voters who are communicants in the Protestant Episcopal church, two persons to be churchwardens thereof, one to hold office until such annual election, and one to hold office until one year after such annual election.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 30, as amended by L. 1898, ch. 358, and L. 1906, ch. 525; originally revised from L. 1813, ch. 60, § 1, subds. §§ 1-6, as amended by L. 1868, ch. 803.

§ 41. **Certificate of incorporation.**—If such meeting shall decide in favor of incorporation and comply with the next preceding section, the presiding officer of such meeting and at least two other persons present and voting thereat, shall execute and acknowledge a certificate of incorporation setting forth:

1. The fact of the calling and holding of such meeting;
2. The name of the corporation as decided upon thereat;
3. The county, and the town, city or village, in which its principal place of worship is, or is intended to be located;
4. The day of the week commencing with the first Sunday in Advent upon which the annual election shall be held;
5. The number of vestrymen decided upon at such meeting;
6. The names of the vestrymen elected at such meeting and the term of office of each;
7. The names of the churchwardens elected at such meeting and the term of office of each.

Such certificate, when accompanied by a certificate of the bishop of the diocese within which the principal place of worship of the proposed cor-

poration is, or is intended to be located, to the effect that he consents to the incorporation of such church, shall be filed in the office of the clerk of the county specified in the certificate of incorporation; but in case the see be vacant, or the bishop be absent or unable to act, the consent of the standing committee with their certificate of the vacancy of the see or of the absence or disability of the bishop, shall suffice.

On filing such certificate in the office of the clerk of the county so specified therein the churchwardens and vestrymen so elected and their successors in office, together with the rector, when there is one, shall form a vestry and shall be the trustees of such church or congregation; and they and their successors shall thereupon, by virtue of this chapter, be a body corporate by the name or title expressed in such certificate, and shall have power, from time to time, to adopt by-laws for its government. Such corporation shall be an incorporated church, and may be termed also an incorporated parish. (*Amended by L. 1917, ch. 201, in effect Apr. 17, 1917.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 31, as amended by L. 1898, ch. 358; originally revised from L. 1813, ch. 60, § 1, subds. 7, 8, as amended by L. 1868, ch. 803.

References.—Place of filing certificate. See § 3, ante. General provisions as to certificates. See General Corporation Law, §§ 4-9.

Name must not conflict, General Corporation Law, § 6. After incorporation, may be changed. General Corporation Law, §§ 60-65.

Acknowledgment.—Officers before whom it may be taken. See General Construction Law, § 11.

Rector.—This section constitutes the vestry a body corporate, and provides that where there is a rector he shall be a member of the vestry, the others being elected by the voting body of the membership. *Ackley v. Irwin* (1911), 71 Misc. 239, 130 N. Y. Supp. 841.

§ 42. Corporate trustees, vestry; powers and duties thereof.—No meeting of the vestry or trustees of any incorporated Protestant Episcopal parish or church shall be held unless either all the members thereof are present, or three days' notice thereof shall be given to each member thereof, by the rector in writing either personally or by mail, or, if there be no rector or he be incapable of acting, by one of the churchwardens; except that twenty-four hours' notice of the first meeting of the vestry or trustees after an annual election shall be sufficient, provided such meeting be held within three days after the election. To constitute a quorum of the vestry or board of trustees there must be present either:

1. The rector, at least one of the churchwardens and a majority of the vestrymen; or,
2. The rector, both churchwardens and one less than a majority of the vestrymen; or,
3. If the rector be absent from the diocese and shall have been so absent for over four calendar months, or if the meeting be called by the rector and he be absent therefrom or be incapable of acting, one churchwarden

and a majority of the vestrymen, or both church wardens and one less than a majority of the vestrymen. But if there be a rector of the parish, no measure shall be taken, in his absence, in any case, for effecting the sale or disposition of the real property of the corporation, nor for the sale or disposition of the capital or principal of the personal property of the corporation, nor shall any act be done which shall impair the rights of such rector. The presiding officer of the vestry or trustees shall be the rector, or if there be none, or he be absent, the churchwarden who shall be called at the chair by a majority of the votes, if both the churchwardens be present; or the churchwarden present, if but one be present. At each meeting of the vestry or trustees each member thereof shall be entitled to one vote. The vestry shall have power to fill a vacancy occurring in the office of a churchwarden or vestryman by death, resignation or otherwise than by expiration of term, until the next annual election, at which, if such vacancy would continue thereafter, it shall be filled for the remainder of the unexpired term. If vacancies exist in the offices of churchwardens or vestrymen in such number that a quorum of the vestry or board of trustees is not in office at any time, the rector shall forthwith call a special election for the filling of such vacancies. If there be no rector the churchwarden longest in office shall call such special election. Notice of such special election shall be read by the rector, or if there be none, or he be absent, by the officiating minister or by one of the churchwardens, on the Sunday next preceding such election, in the time of divine service. If for any reason the usual place of worship of the parish be not open for divine service on such Sunday, such notice shall be posted conspicuously on the outer door of the place of worship for one week next preceding the election. Such notice shall conform to that required for an annual election. The provisions of section forty-three of this chapter relating to annual elections shall apply to such special election, except as inconsistent herewith. Such vacancies shall be filled at such election for the remainder of the unexpired terms. The vestry may, subject to the canons of the Protestant Episcopal church in the United States, and of the diocese in which the parish or church is situated, by a majority vote, elect a rector to fill a vacancy occurring in the rectorship of the parish, and may fix the salary or compensation of the rector.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 32, as amended by L. 1898, ch. 358, and L. 1905, ch. 46; originally revised from L. 1813, ch. 60, § 1, subds. 8, 14-16, as amended by L. 1868, ch. 803.

References.—Powers of vestry in relation to property. See §§ 4, 5, 12, ante. Powers in relation to minister. See §§ 25, 26, ante, and note under § 5.

Mandamus against vestrymen and rector. *People ex rel. Kenney v. Winans* (1890), 29 N. Y. St. Rep. 651, 19 N. Y. Supp. 249; *People ex rel. Fleming v. Hart* (1890), 25 Abb. N. C. 258, 11 N. Y. Supp. 673, *affd.* (1891), 36 N. Y. St. Rep. 874, 13 N. Y. Supp. 903; *People ex rel. St. Stephen's P. E. Church v. Blackhurst* (1891), 60 Hun 63, 15 N. Y. Supp. 114.

Discharge of rector.—The vestry may not by resolution dispense with the services of a rector and discharge him from office, without the action of the superior ecclesi-

astical authority of the diocese. *Ackley v. Irwin* (1910), 69 Misc. 56, 125 N. Y. Supp. 672. See also, *Ackley v. Irwin* (1911), 71 Misc. 239, 130 N. Y. Supp. 841.

§ 43. **Annual elections and special meetings of incorporated Protestant Episcopal parishes.**—The annual election of a Protestant Episcopal parish, hereafter incorporated, shall be held on the secular day in the week commencing with the first Sunday in Advent, designated in its certificate of incorporation. The annual election of an incorporated Protestant Episcopal parish or church heretofore incorporated shall be held on the day fixed for such annual election, by or in pursuance of law, or if no such date be so fixed, then on the Monday next after the first Sunday in Advent. Special meetings of any Protestant Episcopal parish or church heretofore or hereafter incorporated may be held on any secular day fixed by the vestry. Notice of such annual election or special meeting shall be read by the rector of the parish, or if there be none, or he be absent, by the officiating minister or by a church warden thereof, on each of the two Sundays next preceding such election or special meeting, in the time of divine service, or if, for any reason, the usual place of worship of the parish be not open for divine service, the notice shall be posted conspicuously on the outer door of the place of worship for two weeks next preceding the election or special meeting. Such notice shall specify the place, day and hour of holding the election or special meeting. The notice of the annual election shall also specify the name and term of office of each church warden and vestryman whose term of office shall then expire, or whose office shall then be vacant for any cause, and the office for which each such officer is to be then elected. The notice of a special meeting shall specify the matter or question to be brought before such meeting and no matter or question not specified in such notice shall be acted on at such meeting. The presiding officer of such annual or special meeting shall be the rector of the parish, if there be one, or if there be none, or he be absent, one of the church wardens elected for the purpose by a majority of the duly qualified voters present, or if no church warden be present, a vestryman elected in like manner. Such presiding officer shall be the judge of the qualifications of the voters; shall receive the votes cast; and shall declare the result of the votes cast. The presiding officer of such annual or special meeting shall enter the proceedings of the meeting in the book of the minutes of the vestry, sign his name thereto, and offer the same to as many qualified voters present as he shall think fit, to be also signed by them. Male persons of full age belonging to the parish, who have been regular attendants at its worship and contributors to its support for at least twelve months prior to such election or special meeting or since the establishment of such parish, shall be qualified voters at any such election or special meeting, and also, whenever so permitted by the canons of the diocese, women having the like qualifications may vote at the annual elections and special meetings of any parish of such diocese, whenever such parish shall so determine in the

manner provided in section forty-six of this chapter. The action of an annual or special meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon. The polls of an election shall continue open for one hour and longer, in the discretion of the presiding officer, or if required by a vote of a majority of the qualified voters present and voting. The church wardens and vestrymen shall be elected by ballot from male persons qualified to vote at such election, and no person shall be eligible for election as church warden, unless he be also a communicant in the Protestant Episcopal church, nor be eligible for election as vestryman, unless he shall have been baptized. At each annual election of an incorporated Protestant Episcopal parish hereafter incorporated, one church warden shall be elected to hold office for two years; and one-third of the total number of vestrymen of the parish shall be elected to hold office for three years. At each annual election of an incorporated Protestant Episcopal parish or church heretofore incorporated, two church wardens and the total number of its vestrymen shall be elected to hold office for one year thereafter, unless the term of office of but one church warden or of but one-third of its vestrymen shall then expire, in which case one church warden shall be elected to hold office for two years, and one-third of the total number of its vestrymen shall be elected to hold office for three years. Each church warden and vestryman shall hold office after the expiration of his term until his successor shall be chosen. (*Amended by L. 1915, ch. 247.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 33, as amended by L. 1898, ch. 358; L. 1904, ch. 85, and L. 1906, ch. 525; originally revised from L. 1813, ch. 60, § 1, subds. 9–14, as amended by L. 1868, ch. 803.

Rector is presiding officer.—*People v. Lacoste* (1899), 37 N. Y. 192.

Quorum of meeting; what constitutes. See *Mad. Ave. Bap. Ch. v. The Bap. Ch. in Oliver St.* (1866), 32 How. Pr. 335; *Field v. Field* (1832), 9 Wend. 394.

Rights of voters.—See *People v. Tuthill* (1898), 31 N. Y. 550; *People v. German Ch.* (1900), 53 N. Y. 103; *Petty v. Tooker* (1897), 21 N. Y. 267; *Baptist Ch. in Hartford v. Witherell* (1832), 3 Paige 296; *Watkins v. Wilcox* (1875), 4 Hun 220, *affd.* (1876), 66 N. Y. 654.

The rector of a church, presiding over a meeting for the election of churchwardens, in receiving the ballots of those who offer to vote, makes a judicial determination as to the qualifications of the voters, and cannot change his position at a later day. *Matter of Williams* (1908), 57 Misc. 327, 107 N. Y. Supp. 1105.

Validity of election.—See *People v. Lacoste* (1899), 37 N. Y. 192; *Hartt v. Harvey* (1860), 32 Barb. 55; *People ex rel. Hartt v. White* (1860), 11 Abb. Pr. 168, *affd.* see 29 Hun Pr. 573; *People ex rel. Smith v. Peck* (1834), 11 Wend. 604.

§ 44. Changing the number of vestrymen of Protestant Episcopal parishes hereafter incorporated.—If the vestry of a Protestant Episcopal parish, hereafter incorporated, shall, by resolution, recommend that the number of vestrymen of such parish be changed to either three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four vestrymen, notice of such recommendation shall be included in the notice of the next annual election of such parish, or in the notice of a special meeting to be held not less than

six months before the time fixed for holding the next annual election thereafter, and be submitted to such annual or special meeting. If such recommendation be ratified by such meeting, the presiding officer thereof, and at least two qualified voters present thereat, shall execute and acknowledge a certificate setting forth such resolution of the vestry, the fact that notice thereof had been given with the notice of such annual election, or with the notice of such special meeting as the case may be; that the meeting had ratified the same; and the number of vestrymen so decided on. Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded, and such change then, in addition to the number of vestrymen to be elected at such annual election thereafter. If the number of vestrymen be thereby increased, then, in addition to the number of vestrymen to be elected at such annual election, one-third of such increased number of vestrymen shall be elected to hold office for one year thereafter, one-third of such increased number shall be elected to hold office for two years thereafter, and one-third of such increased number shall be elected to hold office for three years thereafter. If the number of vestrymen by such change be reduced, such reduction shall not affect the term of office of any vestryman duly elected, and at such next annual election and at each annual election thereafter, one-third of such reduced number of vestrymen shall be elected to hold office for three years.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 34, as amended by L. 1898, ch. 358, and L. 1906, ch. 525; section was new in former Religious Corporations Law.

§ 45. Changing date of annual election, number and terms of office of vestrymen and terms of office of churchwardens in Protestant Episcopal churches heretofore incorporated.—If the vestry of a Protestant Episcopal parish, heretofore incorporated, shall by resolution, recommend that the date of the annual election be changed to a secular day in the week beginning with the first Sunday in Advent, or that the number of vestrymen be changed to three, six, nine, twelve, fifteen, eighteen, twenty-one or twenty-four, and that the terms of office of the churchwardens be changed so that one warden shall be elected annually; notice of such recommendation shall be included in the notice of the next annual election of such parish, or in the notice of a special meeting to be held not less than six months before the time fixed for holding the next annual election thereafter, and be submitted to such annual or special meeting. If such recommendation be ratified by such meeting, the presiding officer thereof and at least two qualified voters present thereat, shall execute and acknowledge a certificate setting forth such resolution of the vestry; the fact that notice thereof had been given with the notice of the annual election, or with the notice of the special meeting, as the case may be; that such meeting had ratified the same; the date determined upon for the annual election of the parish; the number of vestrymen so decided on;

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and the fact that the meeting determined to thereafter elect churchwardens, so that the term of one warden shall expire annually. Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded. If the meeting determine to change the date of the annual election, the next annual election shall be held on the day in the week beginning with the first Sunday in Advent, determined on at such meeting, and the terms of the vestrymen and churchwardens which, pursuant to law, would expire at the next annual election shall expire and their successors shall be elected on such day. If the meeting determine to change the number of vestrymen and manner of electing wardens and vestrymen, there shall be elected at the first annual election thereafter, one-third of the number of vestrymen so determined on, to hold office for three years; one-third thereof to hold office for two years; and one-third thereof to hold office for one year; and one churchwarden to hold office for one year, and one to hold for two years; and thereafter at the annual election there shall be elected one-third of the number of vestrymen determined on at such meeting and one churchwarden. Any Protestant Episcopal parish, heretofore incorporated, which has changed the number of its vestrymen and the manner of electing wardens and vestrymen pursuant to the provisions of this section, may make further changes in the number of its vestrymen in the manner provided in section forty-four of this chapter.

Source.—Former Religious Corp. L. (L. 1875, ch. 723) § 35, as amended by L. 1898, ch. 358, and L. 1906, ch. 525; section was new in former Religious Corporations Law.

§ 46. Changing the qualifications of voters and the qualifications of wardens and vestrymen.—If the vestry of a Protestant Episcopal parish heretofore incorporated shall by resolution recommend that the qualifications of voters and the qualifications of wardens and vestrymen be changed to conform in both cases to the requirements of section forty-three of this chapter, notice of such recommendation shall be included in the notice of the next annual election of such parish, and be submitted to the meeting. If such recommendation be ratified by such meeting the presiding officer thereof and at least two qualified voters present thereat shall execute and acknowledge a certificate setting forth such resolution of the vestry, the fact that notice thereof had been given with the notice of such annual election, and that the meeting had ratified the same. Such certificate shall be filed in the office of the clerk of the county in which the original certificate of incorporation is filed and recorded.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 36, as amended by L. 1898, ch. 358; section was new in former Religious Corporations Law.

§ 47. Free churches in communion with the Protestant Episcopal church.—Whenever the trustees of any free church in communion with the Protestant Episcopal church heretofore or hereafter organized under the provi-

sions of article nine of this act shall desire to change the management of its affairs and the form of government of the corporation by substituting a vestry in place of such trustees, such change may be made in the following manner: The trustees of any free church having first obtained the written consent of the ecclesiastical authority of the diocese to such change may by an affirmative vote of not less than two-thirds determine by resolution reciting the consent of such ecclesiastical authority and duly recorded in the minutes of such church to change the management of its affairs by substituting a vestry in place of such trustees to manage the affairs of such corporation and free church with the same powers, duties and privileges as are now possessed and exercised by church wardens and vestrymen in churches of the Protestant Episcopal church organized under this article, but subject to the provisions of section one hundred and eighty-three of this chapter and for the purposes set forth in the certificate of incorporation of such free church and for no other purposes; such resolution shall fix the day of the week, commencing with the first Sunday in Advent, upon which the annual election shall be held, the number to constitute such vestry which shall be two church wardens and either three, six, nine, twelve, fifteen, twenty-one or twenty-four vestrymen as may be determined, and shall also designate the persons to be such church wardens and vestrymen to act until the annual election, and copies of such resolution, together with a statement of the vote of the trustees adopting the same certified under the seal of the corporation and verified by the president and secretary thereof, shall be filed in the office of the secretary of state and also in the office of the clerk of the county in which such church or corporation is located. Upon and after the filing of such certificates the church wardens and vestrymen named in said resolution and their successors in office, together with the rector when there shall thereafter be one, shall form the vestry and shall be the vestry and shall constitute the corporation; and at the first annual election the church wardens and vestrymen shall be divided into classes and their respective terms of office fixed and shall be elected by the persons qualified to vote for the church wardens and vestrymen in churches or congregations of the Protestant Episcopal church and the provisions of this article shall govern such election and all future elections and all acts of such vestry, subject to the provisions of section one hundred and eighty-three of this chapter. (*Added by L. 1913, ch. 487.*)

ARTICLE IV.

PRESBYTERIAN CHURCHES.

Section 60. Application of this article.

61. Creation and termination of pastoral relation.

62. Worship.

63. Incorporation of unincorporated Presbyterian churches and decision as to system of incorporation and government.

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- 64. Changing system of trustees.
- 65. Corporate meetings.
- 66. Organization and conduct of corporate meetings; qualifications of voters thereat.
- 67. Changing date of annual corporate meetings.
- 68. Changing number of trustees.
- 69. Trustees, their meetings, vacancies and filling thereof, their powers.
- 70. Definitions.

§ 60. **Application of this article.**—This article applies only to a Presbyterian church in connection with the general assembly of the Presbyterian church in the United States of America.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 37, as added by L. 1902, ch. 97.

The radical change in the policy of the state in giving to religious denominations denominational control over the constituent churches is manifested in numerous provisions of the Religious Corporations Law. *Westminster Presbyterian Church v. Trustees of Presbytery* (1911), 142 App. Div. 855, 869, 127 N. Y. Supp. 836, appeal dis. (1911), 202 N. Y. 581, 96 N. E. 1134.

§ 61. **Creation and termination of pastoral relation.**—The election, calling, settlement, installation, dismissal, removal, translation, constituting or dissolving of the pastoral relation, or fixing or changing of the salary of a minister or pastor of a Presbyterian church in connection with the general assembly of the Presbyterian church in the United States of America, or taking any action for or toward any such purpose, and the calling and conduct of a meeting of any such church for any such purpose, and the qualification of voters at any such meeting, are not authorized or regulated or controlled by any provision of this chapter, but the same shall be in all respects, done, and regulated, and any meeting therefor called, conducted, and controlled, only in accordance with the laws, regulations, practice, discipline, books of government, rules and usages of the ecclesiastical governing body of such church and of the Presbyterian church in the United States of America, except that the salary of any such minister may be increased at any corporate meeting of any such church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 38, as added by L. 1902, ch. 97.

§ 62. **Worship.**—Nothing in this chapter contained shall authorize the fixing or changing of the times, nature or order of public or social or other worship of any Presbyterian church, in any other manner, or by any other authority, than in the manner and by the authority provided in the laws, regulations, practice, discipline, rules and usages of the Presbyterian religious denomination or ecclesiastical governing body, with which such church is connected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 39, as added by L. 1902, ch. 97.

§ 63. **Incorporation of unincorporated Presbyterian churches and decision as to system of incorporation and government.**—A meeting for the purpose of

incorporation of an unincorporated Presbyterian church in connection with the Presbyterian church in the United States of America, must be called and held in pursuance of the provisions of this article.

1. The notice and call of such meeting shall be in writing, and shall state in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour for the purpose of incorporating such church and designating the trustees thereof. The notice must be signed by at least six persons of full age who are then members in good and regular standing of such church by admission into full communion or membership therewith, in accordance with the rules and regulations of such church, and of the governing ecclesiastical body of the denomination or order, to which the church belongs. A copy of such notice shall be posted conspicuously on the outside of the main entrance to such place of worship, at least fifteen days before the day so specified for such meeting, and such notice shall be publicly read at each of the two next preceding regular meetings of such unincorporated church for public worship, at least one week apart, at morning service, if such service be held on Sunday, by the first named of the following persons who is present thereat, to wit: The minister of such church, the officiating minister thereof, the elders thereof in the order of their age beginning with the oldest, the deacons of the church in the order of their age beginning with the oldest, or by any person qualified to sign such notice.

2. At the meeting for incorporation held in pursuance of such notice, the following persons, and no others, shall be qualified voters, to wit: All persons of full age, who are then members, in good and regular standing of such church by admission into full communion or membership therewith, in accordance with the rules and regulations thereof, and of the governing ecclesiastical body of the denomination or order to which the church belongs. The presence of a majority of such qualified voters, at least six in number, shall be necessary to constitute a quorum of such meeting. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present.

3. The first named of the following persons who is present at such meeting shall preside thereat, to wit: The minister of the church, the officiating minister thereof, the elders thereof in the order of their age, beginning with the oldest, the deacons thereof in the order of their age, beginning with the oldest. The presiding officer of the meeting shall receive the votes, be the judge of the qualifications of voters, and declare the result of the votes cast on any matter. Nothing contained in this section, or in this chapter, shall prevent the qualified voters at any such meeting, from choosing another person, a qualified voter, to preside at such meeting, other than the person or officer above designated.

4. The first business of such meeting after its organization, shall be to determine whether such church shall be incorporated, and if so, the name of such church, and whether its temporalities shall be managed by the spiritual

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officers of such church as the trustees thereof, or whether its temporalities shall be managed by trustees to be elected by the church.

5. If such meeting shall determine that such church shall be incorporated and its temporalities managed by the spiritual officers of such church as the trustees thereof, then the meeting shall also determine whether by virtue of their office, the deacons only of such church, or the pastor, ruling elders and deacons of such church, or the pastor and ruling elders of such church shall manage its temporalities, and be the trustees of such corporation.

6. If such meeting shall determine that such church shall be incorporated and its temporalities managed by trustees to be elected by the church, it shall further determine the number of the trustees of such church, which shall not be less than three nor more than nine, and shall further determine the date not more than fifteen months thereafter on which the first annual election of the trustees thereof after such meeting shall be held, and such meeting shall elect from the persons qualified to vote at such meeting, one-third of the number of trustees so decided on who shall hold office until the first annual election of trustees thereafter, one-third of such number of trustees to hold office until the second annual election of trustees thereafter, and one-third of such number of trustees to hold office until the third annual election of trustees thereafter.

7. If any such meeting shall determine that such church shall incorporate in pursuance of this article, the presiding officer and at least two other persons present at such meeting, shall execute, acknowledge and cause to be filed and recorded, as provided in this chapter, a certificate of incorporation. Such certificate of incorporation shall state the name of the proposed corporation: the county and town, city or village, where its principal place of worship is or is intended to be located; the fact that a meeting of such church duly called decided that such church be incorporated, also the determination of such meeting of all the matters required in this article to be determined by such meeting, and, as the case shall be, the names of the persons elected as trustees, and the term for which each was elected, or the names of the spiritual officers and their offices, who, by the determination of such meeting, are by virtue of their office to be trustees of such corporation. On filing such certificate such church shall be a corporation by the name stated therein, and the officers determined upon by the meeting for incorporation and their successors in office, by virtue of their offices, if they be spiritual officers of such church, shall be the trustees of such corporation, or if by said meeting it was determined that the trustees should be elected as such, then such as were so elected by said meeting as trustees, and their successors in office shall be the trustees of such corporation.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 40, as added by L. 1902, ch. 97.

Interference with ecclesiastical matters.—Courts will only interfere in ecclesiastical matters where there are conflicting claims as to church property or

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funds, or where civil rights are involved. The ruling elders and members of the session of a Presbyterian church cannot maintain an action to restrain trustees of the church from acting as such upon the ground that they have been suspended by the session as communicants. *Westminster Presbyterian Church v. Findley* (1904), 44 Misc. 173, 89 N. Y. Supp. 801.

§ 64. Changing system of trustees.—1. If the trustees of an incorporated Presbyterian church in connection with the Presbyterian church in the United States of America, shall at any time be elective as trustees and not trustees by virtue of being spiritual officers, the church may, at an annual corporate meeting if notice thereof be given with the notice of such meeting, determine that the deacons thereof, or the pastors, the ruling elders and the deacons thereof or the pastor and the ruling elders thereof, shall thereafter constitute the trustees thereof and thereupon the presiding officer of such meeting and at least two other persons present thereat, shall sign, acknowledge and cause to be filed and recorded, a certificate stating the fact of such determination, the names of the officers determined upon to be the ex officio trustees thereof; and thereon the terms of office of such elective trustees shall cease, and the officers determined upon by such corporate meeting, and their successors in office shall, by virtue of their respective offices, be the trustees of such church.

2. If, at any time, the spiritual officers of an incorporated Presbyterian church in connection with the Presbyterian church in the United States of America, which officers by virtue of their offices constitute the trustees thereof, shall determine to submit to a meeting of such church corporation, the question whether the trustees of such church shall be thereafter elective as such trustees, they shall cause a special corporate meeting of such church to be called and held in the manner provided in section sixty-five of this chapter, and such corporate meeting shall determine, whether the trustees of such church shall thereafter be elective in pursuance of this article, and also whether the number of such trustees shall be three, six or nine, and the date of the annual corporate meeting of the church. If such meeting shall determine that such trustees shall thereafter be elective as such trustees, and the number of such trustees, and the date of the first annual corporate meeting of the church, the presiding officer thereof and at least two other persons present and voting thereat, shall sign, acknowledge and cause to be filed and recorded in the office of the clerk of the county in which the certificate of incorporation of such church is filed, a certificate of such determination of such meeting; and thereafter the trustees of such church shall be elective in pursuance of this article. At the next annual corporate meeting after the filing of such certificate, one-third of the number of trustees so determined on, shall be elected to hold office for one year, one-third for two years, and one-third for three years, and the officers of such church who by virtue of their offices have been trustees of such church, shall then cease to be such trustees, and thereafter the trustees of such church and their successors shall be elective as such

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trustees as in this article provided. At each subsequent annual corporate meeting of such church, one-third of the number of trustees so determined on shall be elected to hold office for three years.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 41, as added by L. 1902, ch. 97.

§ 65. **Corporate meetings.**—1. In every incorporated church to which this article applies and in which the trustees thereof as such are elective, there shall be held an annual corporate meeting. Such annual corporate meeting of every incorporated church to which this article is applicable, shall be held at the time and place fixed by or in pursuance of law therefor, if such time and place be so fixed, and otherwise, at a time and place to be fixed by its trustees.

2. A special corporate meeting of any such church may be called by trustees thereof on their own motion, and must be so called on the written request of at least ten qualified voters of such church, and shall be called and notice thereof given in the same manner as for an annual corporate meeting.

3. The trustees shall cause notice of the time and place of its corporate meetings to be given at a regular meeting of the church for public worship, at morning service, if such service be held, on each of the two successive Sundays next preceding such meeting, if public worship be had thereon, or otherwise on each of two days, at least one week apart, next preceding such meeting; or if no such public worship be held during such period, by conspicuously posting such notice, in writing, upon the outer entrance to the principal place of worship of such church. Such notice shall be given by the minister of the church, if there be one, or by the officiating minister thereof, if there be one, or by any officer of such church. If such notice be of an annual corporate meeting it shall specify the names of the trustees whose successors are to be elected thereat; if such notice be of a special corporate meeting, it shall specify the particular business to be transacted thereat, and no other business shall be transacted at such special corporate meeting.

4. Whenever in any such incorporated church, by virtue of their offices, any of the spiritual officers thereof are the trustees thereof, they may in their discretion call special corporate meetings of such incorporated church; and in such case such meetings shall be called by the same notice published or posted in the same manner as herein provided for the notice of such a meeting by the trustees of such a church elected as such; and in each such case such notice must specify the particular business to be transacted at such meeting, and no other business shall be transacted at such special corporate meeting.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 42, as added by L. 1902, ch. 97.

§ 66. **Organization and conduct of corporate meetings; qualifications of**

voters thereat.—1. At a corporate meeting of an incorporated church to which this article is applicable the following persons and no others shall be qualified voters, to wit: All persons of full age who are then members in good and regular standing of such church by admission into full communion and membership therewith, in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, of the denomination to which the church belongs, or who have been stated attendants on divine worship in such church and have regularly contributed to the financial support thereof during the year next preceding such meeting.

2. The presence of any corporate meeting of an incorporated church of at least six persons qualified to vote thereat shall be necessary to constitute a quorum. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present.

3. The first named of the following persons who is present at any corporate meeting of any incorporated church shall preside thereat, to wit: The minister of such church, the officiating minister thereof, the officers thereof in the order of their age, beginning with the oldest; any qualified voters elected therefor at the meeting.

4. Nothing contained in this article shall prevent the qualified voters at any meeting held pursuant to this article from choosing a person to preside at any corporate meeting of any incorporated church, other than the person or officer designated in this article to preside thereat, and when such other person shall be chosen he shall exercise all the powers in this article conferred upon the presiding officer of such meeting.

5. The presiding officer of a corporate meeting shall receive the votes, be the judge of the qualifications of voters, and declare the result of the votes cast on any matter. The polls of an annual corporate meeting shall continue open for one hour, or until all qualified voters present shall have had a full opportunity to vote, and longer in the discretion of the presiding officer, or if required by a majority of the qualified voters present.

6. At each annual corporate meeting successors to those trustees whose terms of office then expire shall be elected from the qualified voters by ballot for a term of three years thereafter.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 43, as added by L. 1902, ch. 97.

§ 67. Changing date of annual corporate meetings.—An annual corporate meeting of an incorporated church to which this article is applicable, may change the date of its annual meeting thereafter. If such date shall next thereafter occur less than six months after the annual meeting at which such change is made the next annual meeting shall be held one year from such next recurring date. For the purpose of determining the terms of office of trustees, the time between the annual meeting at which

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such change is made and the next annual meeting thereafter shall be reckoned as one year.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 44, as added by L. 1902, ch. 97.

§ 68. **Changing number of trustees.**—An incorporated church to which this article is applicable, may, at an annual corporate meeting, change the number of its trustees to three, six or nine, and classify them so that the terms of one-third expire each year. No such change shall affect the terms of the trustees then in office, and if the change reduces the number of trustees it shall not take effect until the number of trustees whose terms of office continue for one or more years after an annual election, is less than the number determined upon. Whenever the number of trustees so holding over is less than the number so determined on, trustees shall be elected in addition to those so holding over sufficient to make the number of trustees for the ensuing year equal to the number so determined on. The trustees so elected up to and including one-third of the number so determined on, shall be elected for three years, the remainder up to and including one-third of the number so determined on for two years and the remainder for one year.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 45, as added by L. 1902, ch. 97.

§ 69. **Trustees, their meetings, vacancies and filling thereof, their powers.**—1. Two trustees of an incorporated church, to which this article is applicable, may call a meeting of such trustees by giving at least twenty-four hours' notice thereof personally or by mail to the other trustees. A majority of the trustees lawfully convened shall constitute a quorum for the transaction of business. In case of a tie vote at a meeting of the trustees, the presiding officer of such meeting shall, notwithstanding he has voted once, have an additional casting vote.

2. If any trustee of an incorporated church to which this article is applicable, declines to act, resigns or dies, or having been a member of such church, ceases to be such member, or not having been a member of such church, ceases to be a qualified voter at a corporate meeting thereof, his office shall be vacant and such vacancy may be filled by the remaining trustees until the next annual corporate meeting of such church, at which meeting the vacancy shall be filled for the unexpired term.

3. The trustees of an incorporated church to which this article is applicable shall have the custody and control of all the temporalities and property belonging to the corporation and of the revenues from such property, and shall administer the same in accordance with the discipline, rules, usages, laws, and book of government of the religious denomination or ecclesiastical governing body with which the church is connected, and with the provisions of law relating thereto, for the support and maintenance of the church corporation or providing the members

thereof at a corporate meeting thereof shall so authorize, of some religious, charitable, benevolent or educational object, conducted by such church, or connected with it, or with the denomination with which it is connected, and they shall not use such property or revenue for any other purpose or divert the same from such uses.

4. By-laws, or directions, adopted at any corporate meeting of any such incorporated Presbyterian church shall control the subsequent action of its trustees, as to the temporalities and property or revenues therefrom, and as to the care thereof, and changes in either thereof and disposition thereof.

5. The words "temporalities," "property," "revenue" and "revenues," as used in this section, or elsewhere in this article, shall not be construed to include the contributions in such church or elsewhere for benevolent or other purposes, which shall be contributed and paid to the pastor or pastors, ruling elders, the church session, or the deacons of any such church, either in the church services or otherwise, to be distributed, or used, or administered, by them, or any, or either of them, nor to any funds or property devised, bequeathed or contributed, to be administered or expended by such pastor or pastors, ruling elders, church session, deacons or other spiritual officers of such church.

6. The trustees of any such church shall have no power, without the consent of a corporate meeting, to incur debts beyond what is necessary for the care of the property of the corporation.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 46, as added by L. 1902, ch. 97.

Filling vacancies.—Subdivision 2 does not apply to an enforced vacancy through a decree of dissolution by the governing body, but only to vacancies occurring from time to time by reason of change in membership. The trustees of an incorporated church do not cease to be such by reason of such decree of dissolution. *Westminster Church v. Presbytery of N. Y.* (1914), 211 N. Y. 214, 105 N. E. 199.

History of subd 3.—*Matter of Westminster Church* (1910), 137 App. Div. 301, 121 N. Y. Supp. 1039.

Sale of lands.—A petition by a Presbyterian church, continuing as a secular corporation after being dissolved by an act of the Presbytery of New York, for permission to sell its lands will not be granted, where the Presbytery of New York has intervened, claiming the lands belong to the Presbyterian denomination, and there are actions pending, involving the right to the possession and control of the property. *Matter of Westminster Presbyterian Church* (1910), 137 App. Div. 301, 121 N. Y. Supp. 1039.

§ 70. **Definitions.**—The words "spiritual officers," as used in this article, include the pastor or pastors, the ruling elders, and the deacons, of any church to which this article is applicable.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 47, as added by L. 1902, ch. 97.

ARTICLE V.

ROMAN CATHOLIC AND GREEK CHURCHES.

Section 90. Incorporation of Roman Catholic and Greek Churches.

91. Government of incorporated Roman Catholic and Greek churches.

92. Division of Roman Catholic parish; disposition of property.

§ 90. Incorporation of Roman Catholic and Greek churches.—An unincorporated Roman Catholic church, or an unincorporated Christian Orthodox Catholic church of the Eastern Confession, in this state may become incorporated as a church by executing, acknowledging and filing a certificate of incorporation, stating the corporate name by which such church shall be known and the county, town, city or village where its principal place of worship is, or is intended to be, located.

A certificate of incorporation of an unincorporated Roman Catholic church shall be executed and acknowledged by the Roman Catholic archbishop or bishop, and the vicar-general of the diocese in which its place of worship is, and by the rector of the church, and by two laymen, members of such church who shall be selected by such officials, or by a majority of such officials.

A certificate of incorporation of an unincorporated Christian Orthodox Catholic church of the Eastern Confession shall be executed and acknowledged by the envoy extraordinary and minister plenipotentiary, and the consul-general of Russia to the United States, then acknowledged and received as such by the United States.

On filing such certificate such church shall be a corporation by the name stated in the certificate.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 50; originally revised from L. 1863, ch. 45, § 1, subd. 1; L. 1871, ch. 12, § 1, subd. 1.

References.—Place of filing, § 3, ante. General provisions as to certificates. See General Corporation Law, §§ 4-9.

Name must not conflict. General Corporation Law, § 6.

Acknowledgment.—Officers before whom it may be taken. See Statutory Construction Law, § 11.

Trustees are simply the governing body of a Roman Catholic Church. *People's Bank v. St. Anthony's Roman Cath. Ch.* (1888), 109 N. Y. 512, 17 N. E. 408.

Priests.—Relation of priests to the church authorities; rights as to salary, etc. See *Baxter v. McDonnell* (1898), 155 N. Y. 83, 49 N. E. 667, 40 L. R. A. 670, revg. (1897), 18 App. Div. 235, 45 N. Y. Supp. 765.

§ 91. Government of incorporated Roman Catholic and Greek churches.—The archbishop or bishop and the vicar-general of the diocese to which any incorporated Roman Catholic church belongs, the rector of such church, and their successors in office shall, by virtue of their offices, be trustees of such church. Two laymen, members of such incorporated church, selected by such officers or by a majority of them, shall also be trustees of such incorporated church, and such officers and such laymen trustees shall to-

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gether constitute the board of trustees thereof. The two laymen signing the certificate of incorporation of an incorporated Roman Catholic church shall be the two laymen trustees thereof during the first year of its corporate existence. The term of office of the two laymen trustees of an incorporated Roman Catholic church shall be one year. Whenever the office of any such layman trustee shall become vacant by expiration of term of office or otherwise, his successor shall be appointed from members of the church, by such officers or a majority of them. No act or proceeding of the trustees of any such incorporated church shall be valid without the sanction of the archbishop or bishop of the diocese to which such church belongs, or in case of their absence or inability to act, without the sanction of the vicar-general or of the administrator of such diocese.

The envoy extraordinary and minister plenipotentiary, and the consul-general of Russia to the United States, acknowledged and received as such, and their successors in office shall, by virtue of office, be the trustees of every incorporated Christian Orthodox Catholic church of the Eastern Confession in this state. The trustees of any such church shall have power to fix and change the salary of the rector and his assistant, appointed or commissioned according to the rules and usages of the denomination to which such church belongs.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 51; originally revised from L. 1863, ch. 45, § 1, subds. 1, 2; L. 1871, ch. 12, § 1, subds. 1, 2.

References.—Powers of trustees as to property. See §§ 4, 5, 12, ante. Powers as to ministers. See §§ 25, 26, ante, and note to § 5.

§ 92. Division of Roman Catholic parish; disposition of property.—Wherever a Roman Catholic parish has been heretofore or shall hereafter be duly divided by the Roman Catholic bishop having jurisdiction over said parish, and the original Roman Catholic church corporation is given one part of the old parish, and a new or second Roman Catholic church corporation is given the remaining part of the old parish, and it further appears that by reason of the said division the original Roman Catholic church corporation holds title to real property situate within the part of the old parish that was given to the new or second Roman Catholic church corporation, then the said Roman Catholic bishop or his successor shall have the right and power, of himself, independently of any action or consent on the part of the trustees of the original Roman Catholic church corporation, to transfer the title of the said real property, with or without valuable consideration, to the said new or second Roman Catholic church corporation. Said transfer shall be made by the said Roman Catholic bishop or his successor after having complied with the requirements of the code of civil procedure in the same manner as the trustees of any religious corporation are compelled to do before making a transfer of church property. If a valuable consideration is paid for the transfer the same shall be received by the said Roman Catholic bishop or his successor and dis-

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tributed between the said original Roman Catholic church corporation and the new or second Roman Catholic church corporation in such proportions as in the discretion of the said bishop or his successor may seem proper.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 52, as added by L. 1902, ch. 365.

ARTICLE V-a.

(Article added by L. 1917, ch. 353, in effect May 3, 1917.)

RUTHENIAN GREEK CATHOLIC CHURCHES.

Section 100. Incorporation of Ruthenian Greek Catholic churches.

101. Government of incorporated Ruthenian Greek Catholic churches.

102. Transfer of other religious organizations to Ruthenian Greek Catholic churches; disposition of property.

§ 100. **Incorporation of Ruthenian Greek Catholic churches.**—An unincorporated Ruthenian Greek Catholic church of the Greek rite in this state may become incorporated as a church by executing, acknowledging and filing a certificate of incorporation, stating the corporate name by which said church shall be known, and the county, town, city or village where its principal place of worship is or is intended to be located.

A certificate of incorporation of an unincorporated Ruthenian Greek Catholic church shall be executed and acknowledged by the Ruthenian Catholic bishop, appointed by the pope of Rome to have supervision over Ruthenian Catholics or the Greek rite in the United States, or in case of a vacancy in the office of bishop by reason of death, resignation or otherwise, the Ruthenian administrator of the Ruthenian Catholic diocese duly appointed and recognized by the apostolic delegate in the United States, and the chancellor of the diocese in which its place of worship is, and by the pastor of the church and by two laymen, members of such church, who shall be elected by such officers or by a majority of such officers. On filing such certificate, said church shall be a corporation by the name stated in the certificate. (*Added by L. 1917, ch. 353, in effect May 3, 1917.*)

§ 101. **Government of incorporated Ruthenian Greek Catholic churches.**—The bishop, or in case of vacancy in the office of the bishop, then the administrator, the chancellor of the diocese to which any incorporated Ruthenian Greek Catholic church belongs, together with the pastor of said church, shall by virtue of their office be trustees of such church; two laymen members of such incorporated church selected by such officers, or by a majority of them, shall also be trustees of such incorporated church, and such officers, pastor and such laymen trustees shall together constitute the board of trustees thereof. The two laymen signing the certificate of incorporation of a Ruthenian Greek Catholic church shall be the two laymen trustees thereof during the first year of its corporate existence. The term of office of the two laymen trustees of an incorporated Ruthenian

Greek Catholic church shall be one year. Whenever the office of any such laymen trustee shall become vacant by expiration of term of office or otherwise his successor shall be appointed from members of the church by such officers or a majority of them. No act or proceeding of the trustees of any such incorporated church shall be valid without the sanction or approval in writing of the bishop of the diocese to which said church belongs, or, in case of his absence or disability to act, of his vicar-general or of the administrator of such diocese. (*Added by L. 1917, ch. 353, in effect May 3, 1917.*)

§ 102. **Transfer of other religious organizations to Ruthenian Greek Catholic church; disposition of property.**—Any religious organization or organizations incorporated under and by virtue of any law of this state, whether incorporated under article five of the religious corporations law, or otherwise, shall be and they are hereby authorized to organize under the provisions of this act relating to incorporation of Ruthenian Greek Catholic churches of the Greek rite, and upon the filing of a certificate to be signed by the trustees of such existing association or organization or a majority of them, consenting to such organization or incorporation, under this act, all the right, title and interest of such association or corporation in any estate, real or personal, shall, with all franchises and charter rights, be vested in said body corporate and politic so created under this act and the original incorporation of such association or organization shall then be null and void. (*Added by L. 1917, ch. 353, in effect May 3, 1917.*)

ARTICLE VI.

REFORMED DUTCH, REFORMED PRESBYTERIAN AND LUTHERAN CHURCHES.

Section 110. Decision by a Reformed Dutch or Reformed Presbyterian church as to system of incorporation and government.

111. Decision by Lutheran church as to system of incorporation and government.

112. Incorporation of Reformed Dutch, Reformed Presbyterian and Evangelical Lutheran churches under this article.

113. Consistory of a Reformed church in America; minister, how chosen.

114. Reformed churches in America, changing system of choosing trustees; minister, how chosen.

115. Reformed Presbyterian churches, changing system of choosing trustees; pew rents and minister's salary.

116. Evangelical Lutheran church, changing system of electing trustees.

§ 110. **Decision by a Reformed Dutch or Reformed Presbyterian church as to system of incorporation and government.**—The minister or ministers, if there be any, and the elders and deacons of an unincorporated church in connection with the Reformed church in America, the true Reformed Dutch church in the United States of America, or with the Reformed Presbyterian church, may determine to incorporate such church in pur-

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suance of this article, or to call a meeting of such unincorporated church for the purpose of deciding whether such church shall be incorporated in pursuance of article ten of this chapter, entitled "Special provisions for the incorporation and government of churches of other denominations."

If such ministers, elders and deacons determine to call such meeting for such purpose, then such church may be incorporated and shall be governed after its incorporation in pursuance of the provisions of article ten of this chapter, except such provisions thereof as are applicable to churches of a single denomination only, and except that the notice of the meeting for incorporation shall be signed by such ministers, elders and deacons or a majority of them, and no other signatures thereto shall be necessary to its validity; and, if it be a Reformed church in America, it shall, after incorporation, be governed by such of the provisions of this article as relates to its consistory and to the choice of its minister.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 60; originally revised from L. 1813, ch. 60, § 2; L. 1822, ch. 187, § 1; L. 1825, ch. 303.

§ 111. Decision by Lutheran church as to system of incorporation and government.—A meeting for the purpose of incorporating an unincorporated Evangelical Lutheran church must be called and held in pursuance of the provisions of article ten of this chapter, except that the first business of such meeting after its organization, shall be to determine whether such church shall be incorporated and governed in pursuance of this article, or in pursuance of article ten of this chapter. If such meeting determines that such church shall be incorporated and governed in pursuance of this article, then no further proceedings shall be taken in pursuance of article ten, and such church may be incorporated and shall be governed after its incorporation in pursuance of the provisions of the following sections of this article, except such provisions as are applicable only to churches of a different denomination; and the certificate of incorporation shall recite such determination of such meeting. If such meeting determine that such church shall be incorporated and governed in pursuance of article ten of this chapter, then this article shall not be applicable thereto, but such church may be incorporated and shall be governed after its incorporation in pursuance of the provisions of article ten of this chapter, except such provisions as are applicable to churches of a single religious denomination only.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 61, as amended by L. 1896, chs. 35 and 190, and L. 1902, ch. 97; originally revised from L. 1886, ch. 16; L. 1887, ch. 406, §§ 1, 2.

§ 112. Incorporation of Reformed Dutch, Reformed Presbyterian and Evangelical Lutheran churches under this article.—If any unincorporated church in connection with the Reformed church in America, the true Reformed Dutch church in the United States of America, the Reformed Presbyterian church, or with the Evangelical Lutheran church, determined to

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incorporate in pursuance of this article, the minister or ministers and the elders and deacons thereof shall execute, acknowledge and cause to be filed and recorded, a certificate in pursuance of this article. The deacons of a Reformed Presbyterian church may alone sign such certificate if authorized so to do by such church. Such certificate of incorporation shall state the name of the proposed corporation, the county and town, city or village where its principal place of worship is or is intended to be located, and, if it be an Evangelical Lutheran church, the fact that a meeting of such church duly called decided that it be incorporated under this article. If it be signed by the deacons of a Reformed Presbyterian church it shall state that they were authorized so to do by such church. On filing such certificate such church shall be a corporation by the name stated therein, and the minister or ministers, if any, and the elders and deacons of such church shall by virtue of their offices be the trustees of such corporation, except that if it be a Reformed Presbyterian church, the certificate of incorporation of which shall have been, in pursuance of law, signed by its deacons only, the deacons of such church shall, by virtue of their offices, be the trustees of such corporation.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 62, as amended by L. 1896, ch. 190, and L. 1902, ch. 97; originally revised from L. 1813, ch. 60, § 2; L. 1822, ch. 187, § 2; L. 1825, ch. 303; L. 1866, ch. 447; L. 1886, ch. 16; L. 1887, ch. 406.

References.—Places of filing certificate, § 3, ante. General provisions as to certificates. See General Corporation Law, §§ 4–9. Powers of trustees in relation to corporate property. See §§ 4, 5, 12, ante.

§ 113. **Consistory of a Reformed church in America; minister, how chosen.**—Any church in connection with the Reformed church in America, the choice or election of the members of whose consistory is not subject to the ecclesiastical rules or jurisdiction of such Reformed church in America, shall, if the consistory so determine, be subject to such rules and jurisdiction; and thereafter the choice of the members of the consistory shall be in accordance with such rules and practices.

If any such church be incorporated under article ten of this chapter, or if its trustees be elective in pursuance of such article, its board of trustees and its consistory shall act concurrently in the choice of its minister.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 63; originally revised from L. 1835, ch. 90, § 10.

Under the constitution of the Reformed Protestant Dutch Church in America, the relation between the pastor and the congregation may be dissolved by the classis within whose bounds such church is located. *Connitt v. The Reformed, etc.*, Ch. (1874), 54 N. Y. 551.

§ 114. **Reformed churches in America, changing system of choosing trustees; minister, how chosen.**—If the ministers, elders and deacons who, at any time, by virtue of their offices, constitute the trustees of any Reformed church in America, or of any true Reformed Dutch church in the United States of America, determine that the trustees of such church shall there-

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after be elective in pursuance of article ten of this chapter, and shall determine whether the number of such trustees shall be three, six or nine, and the date of the annual corporate meeting of the church, they may sign, acknowledge and cause to be filed and recorded in the office of the clerk of the county in which the certificate of incorporation of such church is filed or recorded, a certificate of such determinations. Thereafter the trustees of such church shall be elective in pursuance of the provisions of article ten of this chapter, relating to the election of trustees of incorporated churches. At the next annual corporate meeting after the filing of such certificate, one-third of the number of trustees so determined on shall be elected to hold office for one year, one-third for two years and one-third for three years, and the minister, elders and deacons shall cease to be the trustees of such church. At each subsequent annual corporate meeting of such church, one-third of the number of trustees so determined on shall be elected to hold office for three years. If the trustees of an incorporated Reformed church in America or of a true Dutch Reformed church in the United States of America are at any time elective, in pursuance of article ten of this chapter, or otherwise, the board of trustees and the consistory thereof may concurrently determine that the minister or ministers, if any, and the elders and deacons of such church shall constitute the trustees thereof. Thereon the president and clerk of the consistory and the president and clerk of the board of trustees shall sign and acknowledge and cause to be filed and recorded in the office of the clerk of the county in which the original certificate of incorporation is filed or recorded, a certificate of such determination, stating the names of such ministers, elders and deacons. On so filing and recording such certificate, such board of trustees shall be dissolved, and the minister or ministers, and elders and deacons of such church, and their successors in office shall constitute the trustees of such church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 64, as amended by L. 1907, ch. 728; originally revised from L. 1835, ch. 90, § 8; L. 1883, ch. 501, § 1.

§ 115. Reformed Presbyterian churches, changing system of choosing trustees; pew rents and minister's salary.—If any incorporated Reformed Presbyterian church, at a meeting of the church or congregation, determine that the deacons of such church shall be the trustees thereof, then the deacons of such church actively engaged in the exercise of their offices therein, and their successors in office, shall, by virtue of their respective offices, be the trustees of such church. The salary of the minister and the pew rents in any such church shall be fixed by the vote of the congregation, and the trustees shall not fix or change the same.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 65; originally revised from L. 1822, ch. 187; L. 1866, ch. 447.

§ 116. Evangelical Lutheran church, changing system of electing trustees.—If the trustees of an incorporated Evangelical Lutheran church shall

at any time be elective in pursuance of article ten of this chapter, the church may, at an annual corporate meeting, if notice thereof be given with the notice of such meeting determine that the minister or ministers and elders and deacons thereof shall thereafter constitute the trustees thereof, and thereon the trustees of such church shall sign, acknowledge and cause to be filed and recorded, a certificate stating the fact of such determination, and the name of the minister or ministers, if any, and of the elders and deacons of such church; and thereon the terms of office of such elective trustees shall cease, and the minister or ministers and the elders and deacons of such church, and their successors in office shall, by virtue of their respective offices, be the trustees of such church. If, at any time, the officers of an incorporated Evangelical Lutheran church which officers by virtue of their offices constitute the trustees thereof shall determine to submit to a meeting of such church corporation, the question whether the trustees of such church shall be thereafter elective in pursuance of article ten of this chapter, they shall cause a corporate meeting of such church to be called and held in the manner provided in sections one hundred and ninety-four and one hundred and ninety-five of this chapter, and such corporate meeting shall determine whether the trustees of such church shall thereafter be elective in pursuance of article ten of this chapter, and also whether the number of such trustees shall be three, six or nine, and the date of the annual corporate meeting of the church. If such meeting shall determine that such trustees shall thereafter be elective, the presiding officer thereof and at least two other persons present and voting thereat, shall sign, acknowledge and cause to be filed and recorded in the office of the clerk of the county in which the certificate of incorporation of such church is filed, a certificate of such determination of such meeting; and thereafter the trustees of such church shall be elective in pursuance of article ten of this chapter. At the next annual corporate meeting after the filing of such certificate, one-third of the number of trustees so determined on shall be elected to hold office for one year, one-third for two years, and one-third for three years, and the officers of such church who by virtue of their offices have been trustees of such church, shall then cease to be such trustees, and thereafter article ten of this chapter shall apply to such church. At each subsequent annual corporate meeting of such church, one-third of the number of trustees so determined on shall be elected to hold office for three years.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 66, as amended by L. 1896, ch. 190, and L. 1902, ch. 97; originally revised from L. 1886, ch. 16; L. 1887, ch. 406.

ARTICLE VII.

BAPTIST CHURCHES.

- Section 130. Notice of meeting for incorporation.
- 131. The meeting for incorporation.
 - 132. The certificate of incorporation.
 - 133. Time, place and notice of corporate meetings.
 - 134. Organization and conduct of corporate meetings; qualifications of voters thereat.
 - 135. Changing date of annual corporate meetings.
 - 136. Changing number of trustees.
 - 137. Meetings of trustees.
 - 138. The creation and filling of vacancies among trustees of such churches.
 - 139. Control of trustees by corporate meetings of such churches; salary of minister.
 - 140. Transfer of property to Baptist corporations.

§ 130. Notice of meeting for incorporation.—Notice of a meeting for the purpose of incorporating an unincorporated Baptist church shall be given as follows: The notice shall be in writing, and shall state, in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour, for the purpose of incorporating such church, electing trustees thereof, and selecting a corporate name therefor. The notice must be signed by at least six persons of full age, who are then members in good and regular standing of such church by admission into full communion or membership therewith. A copy of such notice shall be publicly read at a regular meeting of such unincorporated church for public worship, on the two successive Sundays immediately preceding the meeting, by the minister of such church, or a deacon thereof or by any person qualified to sign such notice.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 67, as added by L. 1896, ch. 336.

§ 131. The meeting for incorporation.—At the meeting for incorporation, held in pursuance of such notice, the qualified voters, until otherwise decided as hereinafter provided, shall be all persons of full age, who are then members, in good and regular standing of such church, by admission into full communion or membership therewith. At such meeting the presence of a majority of such qualified voters, at least six in number, shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon. There shall be elected at said meeting from the qualified voters then present, a presiding officer, a clerk to keep the record of the proceedings of the meeting and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors shall declare the result of the ballots cast on any matter, and shall be the judges of the qualifications of voters. If the meeting shall decide that such unincorporated church shall become

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incorporated, the meeting shall also decide upon the name of the proposed corporation, the number of the trustees thereof, which shall be three, six, nine or twelve, and the date, not more than fifteen months thereafter, on which the first annual election of the trustees thereof shall be held, and shall decide also whether those who, from the time of the formation of such church or during the year preceding the meeting for incorporation, have statedly worshipped with such church and have regularly contributed to the financial support thereof, shall be qualified voters at such meeting for incorporation, and whether those who during the year preceding the subsequent corporate meetings of the church shall have statedly worshipped with such church and shall have regularly contributed to the financial support thereof, shall be qualified voters at such corporate meetings. Such meeting shall thereupon elect by ballot from the persons qualified to vote thereat one-third of the number of trustees so decided on, who shall hold office until the first annual election of trustees thereafter, and one-third of such number of trustees who shall hold office until the second annual election of trustees thereafter, and one-third of such number of trustees who shall hold office until the third annual election of trustees thereafter, or until the respective successors of such trustees shall be elected. (*Amended by L. 1913, ch. 397.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 68, as added by L. 1896, ch. 336.

§ 132. **The certificate of incorporation.**—If the meeting shall decide that such unincorporated church shall become incorporated, the presiding officer of such meeting and the two inspectors of election shall execute a certificate setting forth the name of the proposed corporation, the number of the trustees thereof, the names of the persons elected as trustees and the terms of office for which they were respectively elected and the county and town, city or village in which its principal place of worship is or is intended to be located. On the filing and recording of such certificate after it shall have been acknowledged or proved as hereinbefore provided, the persons qualified to vote at such meeting and those persons who shall thereafter, from time to time, be qualified voters at the corporate meetings thereof, shall be a corporation by the name stated in such certificate, and the persons therein stated to be elected trustees of such church shall be the trustees thereof, for the terms for which they were respectively elected and until their respective successors shall be elected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 69, as added by L. 1896, ch. 336.

References.—Place of filing certificate. See § 3, ante. General provisions as to certificates. See General Corporation Law, §§ 4–9.

§ 133. **Time, place and notice of corporate meetings.**—The annual corporate meeting of every incorporated Baptist church shall be held at the time and place fixed by or in pursuance of law therefor, if such time and

place be so fixed, and otherwise, at a time and place to be fixed by its trustees. A special corporate meeting of any such church may be called by the board of trustees thereof, on its own motion, and shall be called on the written request of at least ten qualified voters of such church. The trustees shall cause notice of the time and place of its annual corporate meeting, and of the names of any trustees whose successors are to be elected thereat; and, if a special meeting, of the business to be transacted thereat, to be publicly read by the minister of such church or any trustees thereof at a regular meeting of the church for public worship, on the two successive Sundays immediately preceding such meeting; or if no such meeting for public worship shall have been held during such period, by conspicuously posting such notice, in writing, upon the outer entrance of the principal place of worship of such church and by mailing a copy of such notice to each member of such church in a securely sealed envelope, postage prepaid, addressed to his last known place of residence, at least two weeks before such meeting. (*Amended by L. 1914, ch. 10.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 70, as added by L. 1896, ch. 336.

§ 134. Organization and conduct of corporate meetings; qualifications of voters thereat.—At a corporate meeting of an incorporated Baptist church the qualified voters shall be all persons of full age, who are then members of such church in good and regular standing by admission into full communion or membership therewith, or who have statedly worshiped with such church and have regularly contributed to the financial support thereof during the year next preceding such meeting; but any incorporated Baptist church may at any annual corporate meeting thereof, if notice of the intention so to do has been given with the notice of such meeting, decide that thereafter only members of such church of full age and in good and regular standing by admission into full communion or membership therewith shall be qualified voters at the corporate meetings. At such corporate meetings the presence of at least six persons qualified to vote thereat shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon. There shall be elected at said meeting from the qualified voters then present, a presiding officer, a clerk to keep the records of the proceedings of the meeting and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors of election shall declare the result of the ballots cast on any matter and shall be the judge of the qualifications of voters. At each annual corporate meeting, successors to those trustees whose terms of office then expire, shall be elected by ballot from the qualified voters, for a term of three years thereafter, and until their successors shall be elected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 71, as added by L. 1896, ch. 336.

References.—See notes under § 43, ante, as to rights of voters and legality of

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election. General provisions as to corporate elections. See General Corporation Law, §§ 23-ff.

§ 135. **Changing date of annual corporate meetings.**—An annual corporate meeting of an incorporated Baptist church may change the date of its annual meeting thereafter. If the date fixed for the annual meeting shall be less than six months after the annual meeting at which such change is made, the next annual meeting shall be held one year from the date so fixed. For the purpose of determining the terms of office of trustees, the time between the annual meeting at which such change is made and the next annual meeting thereafter shall be reckoned as one year.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 72, as added by L. 1896, ch. 336.

§ 136. **Changing number of trustees.**—An incorporated Baptist church may, at an annual corporate meeting, change the number of its trustees to three, six, nine or twelve, or classify them so that the terms of one-third expire each year, provided that notice of such intended change or classification be included in the notice of such annual corporate meeting. No such change shall affect the terms of the trustees then in office, and if the change reduces the number of trustees, elections shall not be held to fill vacancies caused by the expiration of the terms of trustees until the number of trustees equals the number to which the trustees were reduced. Whenever the number of trustees in office is less than the number so determined on, sufficient additional trustees shall be elected to make the number of trustees equal to the number so determined on. The trustees so elected up to and including one-third of the number so determined on, shall be elected for three years, the remainder up to and including one-third of the number so determined on for two years, and the remainder for one year. (*Amended by L. 1913, ch. 397.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 73, as added by L. 1896, ch. 336.

§ 137. **Meetings of trustees.**—Meetings of the trustees of an incorporated Baptist church shall be called by giving at least twenty-four hours' notice thereof personally or by mail to all the trustees and such notice may be given by two of the trustees, but by the unanimous consent of the trustees a meeting may be held without previous notice thereof. A majority of the whole number of trustees shall constitute a quorum for the transaction of business at any meeting lawfully convened.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 74, as added by L. 1896, ch. 336.

§ 138. **The creation and filling of vacancies among trustees of such churches.**—If any trustee of an incorporated Baptist church declines to act, resigns or dies, or having been a member of such church ceases to be such member, or not having been a member of such church, ceases to be

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a qualified voter at a corporate meeting thereof, his office shall be vacant, and such vacancy may be filled by the remaining trustees until the next annual corporate meeting of such church, at which meeting the vacancy shall be filled for the unexpired term.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 75, as added by L. 1896, ch. 336.

§ 139. Control of trustees by corporate meetings of such churches; salary of minister.—The trustees of an incorporated Baptist church shall have no power to settle or remove a minister or to fix his salary or, without the consent of a corporate meeting, to incur debts beyond what is necessary for the administration of the temporal affairs of the church and for the care of the property of the corporation; or to fix or change the time, nature or order of the public or social worship of such church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 76, as added by L. 1896, ch. 336.

§ 140. Transfer of property to Baptist corporations.—Any incorporated Baptist church, created by or existing under the laws of the state of New York, having its principal office or place of worship in the state of New York, or whose last place of worship was within the state of New York, is hereby authorized and empowered, by a vote of two-thirds of its qualified voters present and voting therefor, at a meeting regularly called for that purpose, to transfer and convey any of its property, real or personal, which it now has or may hereafter acquire, to any religious, charitable or missionary corporation connected with the Baptist denomination and incorporated by or organized under any law or laws of the state of New York, either solely, or among other purposes, to establish or maintain, or to assist in establishing or maintaining churches, schools, or mission stations or to erect, or assist in the erection of such buildings as may be necessary for any of such purposes, and on or without the payment of any money or other consideration therefor, and upon such transfer or conveyance being made, the title to and the ownership and right of possession of the property so transferred and conveyed shall be vested in and conveyed to such grantee; provided, however, that nothing herein contained shall impair or affect in any way, any existing claim upon or lien against any property so transferred or conveyed, or any action at law or legal proceeding, and subject, in respect to the amount of property the said grantee may take and hold, to the restrictions and limitations of existing laws.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 77, as added by L. 1896, ch. 336.

ARTICLE VIII.

CONGREGATIONAL AND INDEPENDENT CHURCHES.

- Section 160. Notice of meeting for incorporation.
161. The meeting for incorporation.
162. The certificate of incorporation. •
163. Time, place and notice of corporate meetings.
164. Organization and conduct of corporate meetings; qualifications of voters.
165. Changing date of annual corporate meetings.
166. Changing number of trustees.
167. Meetings of trustees.
168. Vacancies among trustees.
169. Limitation of powers of trustees.
170. Election and salary of ministers.
171. Transfer of property.

§ 160. Notice of meeting for incorporation.—Notice of a meeting for the purpose of incorporating an unincorporated Congregational or Independent church shall be given as follows: The notice shall be in writing, and shall state, in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour, for the purpose of incorporating such church, electing trustees thereof, and selecting a corporate name therefor. The notice must be signed by at least six persons of full age, who have statedly worshiped with such church and have regularly contributed to its support, according to its usages, for at least one year or since it was formed. A copy of such notice shall be publicly read at a regular meeting of such unincorporated church for public worship, on the two successive Sundays immediately preceding the meeting, by the minister of such church, or a deacon thereof or by any person qualified to sign such notice.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78, as added by L. 1897, ch. 621.

§ 161. The meeting for incorporation.—At the meeting for incorporation, held in pursuance of such notice, the qualified voters, until otherwise decided as hereinafter provided, shall be all persons of full age who have statedly worshiped with such church and have regularly contributed to its support, according to its usages, for at least one year or since it was formed. At such meeting the presence of a majority of such qualified voters, at least six in number, shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon. The meeting shall be called to order by one of the signers of the call. There shall be elected at such meeting, from the qualified voters then present, a presiding officer, a clerk to keep the record of the proceedings of the meeting and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors shall decide the re-

sult of the ballots cast on any matter, and shall be the judges of the qualifications of the voters. If the meeting shall decide that such unincorporated church shall become incorporated, the meeting shall also decide upon the name of the proposed corporation, the number of the trustees thereof, which shall be three, six or nine, and the date, not more than fifteen months thereafter, on which the first annual election of the trustees thereof shall be held; and it may, by a two-thirds vote, decide that all members of the unincorporated church, of full age, in good and regular standing, who have statedly worshiped with such church but who have not contributed to the financial support thereof, shall also be qualified voters at such meeting, and that such church members, who, for one year next preceding any subsequent corporate meeting, shall have statedly worshiped with such church and have been members thereof in good and regular standing, but have not regularly contributed to the financial support thereof, shall be qualified voters at such corporate meetings. Such meeting shall thereupon elect by ballot from the persons qualified to vote thereat one-third of the number of trustees so decided on, who shall hold office until the first annual election of trustees thereafter, one-third of such number of trustees who shall hold office until the second annual election of trustees thereafter, and one-third of such number of trustees who shall hold office until the third annual election of trustees thereafter, or until the respective successors of such trustees shall be elected. Such meeting shall also elect by ballot a clerk of the corporation, who shall hold his office until the close of the next annual meeting.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-a, as added by L. 1897, ch. 621.

§ 162. The certificate of incorporation.—If the meeting shall decide that such unincorporated church shall become incorporated, the presiding officer of such meeting and the two inspectors of election shall execute a certificate setting forth the name of the proposed corporation, the number of trustees thereof, the names of the persons elected as trustees, the terms of office for which they were respectively elected and the county and town, city or village in which its principal place of worship is or is intended to be located. On the filing and recording of such certificate, after it shall have been acknowledged or proved as hereinbefore provided, the persons qualified to vote at such meeting and those persons who shall thereafter, from time to time, be qualified voters at the corporate meetings thereof, shall be a corporation by the name stated in such certificate, and the persons therein stated to be elected trustees of such church shall be the trustees thereof for the terms for which they were respectively elected and until their respective successors shall be elected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-b, as added by L. 1897, ch. 621.

References.—Place of filing certificate. See § 3, ante. General provisions as to certificates. See General Corporation Law, §§ 4-9.

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§ 163. **Time, place and notice of corporate meetings.**—The annual corporate meeting of every church incorporated under this article shall be held at the time and place fixed by its by-laws, or if no time and place be so fixed, then at a time and place to be first fixed by its trustees, but to be changed only by a by-law adopted at an annual meeting. A special corporate meeting of any such church may be called by the board of trustees thereof, on its own motion, and shall be called on the written request of at least ten qualified voters of such church. The trustees shall cause notice of the time and place of its annual corporate meeting, and of the names of any trustees whose successors are to be elected thereat, and if a special meeting, of the business to be transacted thereat, to be publicly read by the minister of such church or any trustees thereof at a regular meeting of the church for public worship, on the two successive Sundays immediately preceding such meeting.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-c, as added by L. 1897, ch. 621.

§ 164. **Organization and conduct of corporate meetings; qualifications of voters.**—At every corporate meeting of a church incorporated under this article all persons of full age who, for one year next preceding such meeting, have statedly worshiped with such church and have regularly contributed to its financial support, according to its usages, and no others, shall be qualified voters; but, if so decided, by a two-thirds vote at the original meeting or at any annual corporate meeting thereof, after notice of intention so to do has been given with every notice of such meeting, all members of such church of full age and in good and regular standing, by admission into full communion or membership therewith, who have statedly worshiped with such church, for one year next preceding the meeting at which they vote, may also be admitted as qualified voters at corporate meetings. At such corporate meetings, the presence of at least six persons qualified to vote thereat shall be necessary to constitute a quorum; and all matters or questions shall be decided by a majority of the qualified voters voting thereon, except that by-laws can be adopted or amended only by a two-thirds vote. The clerk of the corporation shall call the meeting to order; and under his supervision the qualified voters then present shall choose a presiding officer and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors of election shall declare the result of the ballots cast on any matter and shall be the judges of the qualifications of voters. At each annual corporate meeting, successors to those trustees whose terms of office then expire shall be elected by ballot from the qualified voters, for a term of three years thereafter, and until their successors shall be elected. A clerk of the corporation shall be elected by ballot, who shall hold office until the close of the next annual meeting, and until his successor shall be elected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-d, as added by L. 1897, ch. 621.

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References.—See notes under § 43, ante, as to rights of voters and legality of election. General provisions as to corporate elections. See General Corporation Law, §§ 23-27.

§ 165. Changing date of annual corporate meetings.—An annual corporate meeting of any church incorporated under this article may change the date of its subsequent annual meetings. If the date fixed for the annual meeting shall be less than six months after the annual meeting at which such change is made, the next annual meeting shall be held one year from the date so fixed. For the purpose of determining the terms of office of trustees, the time between the annual meeting at which such change is made and the next annual meeting thereafter shall be reckoned as one year.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-e, as added by L. 1897, ch. 621.

§ 166. Changing number of trustees.—Any such incorporated church may, at an annual corporate meeting, change the number of its trustees to three, six or nine, classifying them so that the terms of one-third expire each year, provided that notice of such intended change be included in the notice of such annual corporate meeting. No such change shall affect the terms of the trustees then in office; and if the change reduces the number of trustees, elections shall not be held to fill the vacancies caused by the expiration of the terms of trustees, until the number of trustees equals the number to which the trustees were reduced. Whenever the number of trustees in office is less than the number so determined on, sufficient additional trustees shall be elected to make the number of trustees equal to the number so determined on. The trustees so elected, up to and including one-third of the number so determined on, shall be elected for three years, the remainder up to and including one-third of the number so determined on for two years, and the remainder for one year.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-f, as added by L. 1897, ch. 621.

§ 167. Meetings of trustees.—Meetings of the trustees of any such incorporated church shall be called by giving at least twenty-four hours' notice thereof personally or by mail to all the trustees; and such notice may be given by two of the trustees; but by the unanimous consent of the trustees, a meeting may be held without previous notice thereof. A majority of the whole number of trustees shall constitute a quorum for the transaction of business, at any meeting lawfully convened.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-g, as added by L. 1897, ch. 621.

§ 168. Vacancies among trustees.—If any trustee of any such incorporated church declines to act, resigns or dies, or ceases to be a qualified voter at a corporate meeting thereof, his office shall be vacant; and such vacancy may be filled by the remaining trustees until the next annual

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corporate meeting of such church; at which meeting the vacancy shall be filled for the unexpired term.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-h, as added by L. 1897, ch. 621.

§ 169. Limitation of powers of trustees.—The trustees of any such incorporated church shall have no power to call, settle or remove a minister or to fix his salary, nor without the consent of a corporate meeting, to incur debts, beyond what is necessary for the administration of the temporal affairs of the church and for the care of the property of the corporation; or to fix or change the time, nature or order of the public or social worship of such church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-i, as added by L. 1897, ch. 621.

§ 170. Election and salary of ministers.—The ministers of any such church shall be called, settled or removed and their salaries fixed, only by the vote of a majority of the members of such corporation duly qualified to vote at elections present and voting at a meeting of such corporation specially called for that purpose, in the manner hereinbefore provided for the call of special meetings; and any such corporation may, by its by-laws, make the call, settlement or removal of its ministers dependent upon a concurrent vote of the unincorporated church connected with such corporation; and in that case the concurrence of a majority of the members of such unincorporated church, present and voting at a meeting thereof, called for that purpose, shall be necessary to the call, settlement or removal of such ministers.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-j, as added by L. 1897, ch. 621.

§ 171. Transfer of property.—Any incorporated Congregational church, created by or existing under the laws of the state of New York, having its principal office or place of worship in the state of New York, or whose last place of worship was within the state of New York, is hereby authorized and empowered, by the concurrent vote of two-thirds of its qualified voters present and voting therefor, at a meeting regularly called for that purpose, and of two-thirds of all its trustees, to direct the transfer and conveyance of any of its property, real or personal, which it now has or may hereafter acquire, to any religious, charitable or missionary corporation connected with the Congregational denomination and incorporated by or organized under any law of the state of New York, either solely, or among other purposes, to establish or maintain, or to assist in establishing or maintaining churches, schools or mission stations, or to erect or assist in the erection of such buildings as may be necessary for any of such purposes, with or without the payment of any money or other consideration therefor; and upon such concurrent votes being given, the trustees shall execute such transfer or conveyance; and upon the same being made, the title to and

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the ownership and right of possession of the property so transferred and conveyed shall be vested in and conveyed to such grantee; provided, however, that nothing herein contained shall impair or affect in any way any existing claim upon or lien against any property so transferred or conveyed, or any action at law or legal proceeding; and such transfer shall be subject, in respect to the amount of property the said grantee may take and hold, to the restrictions and limitations of all laws then in force.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 78-k, as added by L. 1897, ch. 621.

ARTICLE IX.

FREE CHURCHES.

Section 180. Corporation, how formed.

181. Rights, powers and limitations.

182. Vacancies in boards of trustees.

183. Seats and pews to be free.

§ 180. Corporation, how formed.—Any seven or more persons of full age, citizens of the United States, and a majority of them being residents of this state, who shall associate themselves for the purpose of founding and continuing one or more free churches, may make, sign and acknowledge, before any officer authorized to take the acknowledgment of deeds of land to be recorded in this state, and may file in the office of the secretary of state, and also of the clerk of the county in which any such church is to be established, and record as provided in section three of this chapter, a certificate in writing, in which shall be stated the name or title by which such society shall be known in the law, the purpose of its organization, and the names of seven trustees, of whom not less than five shall be persons who are not ministers of the gospel or priests of any denomination, to manage the same; but such certificate shall not be filed, unless with the written consent and approbation of a justice of the supreme court of the district in which any such church shall be intended to be established, to be indorsed on such certificate.

Source.—L. 1854, ch. 218, § 1.

§ 181. Rights, powers and limitations.—Upon the filing of such certificate the persons named therein as trustees, and their successors, being citizens of the United States and residents of this state, shall be a body politic and corporate, with all the rights, powers and duties, and subject to all the restrictions and obligations and other provisions, so far as the same may be applicable and consistent with this article, specified and contained in the act entitled "An act for the incorporation of benevolent, charitable, scientific and missionary societies," passed April twelfth, eighteen hundred and forty-eight, and the act amending the same, passed April seventh, eighteen hundred and forty-nine, except that the limitation

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in the first of the said acts of the value of real estate that may be held by any society in the city or county of New York, incorporated under this article, shall not be applicable to any church edifice erected or owned by such society, or the lot of ground on which the same may be built; and except that the provision in the first of the said acts, in relation to the personal liability of the trustees, shall be applicable only to the trustees who shall have assented to the creation of any debt.

Source.—L. 1854, ch. 218, § 2.

Consolidators' note.—The reference to the statutes mentioned in this section has been allowed to remain, although the acts named have been repealed. This repeal does not affect the references in the section. Section 32 of the Statutory Construction Law provides that "if any provision of a law be repealed and in substance be re-enacted, reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision." The statutes referred to in the section have been substantially repealed in the membership and other consolidated laws, and under the provision of the Statutory Construction Law referred to the references in the section are deemed to be references to these re-enacted provisions. Under the common-law rule the references would not be destroyed by the repeal of the statutes referred to. In the matter of *Phoenix Iron Co.*, 62 Hun 263, certain costs and allowances granted by an act of 1862 were not set forth bodily in the statute, but were incorporated by a reference to the Code of Procedure then in existence. By this reference it was held that the provisions of the Code referred to became a portion of the act as effectually as if they had been set forth in words and that the special repeal of the Code of Procedure did not effect the act of 1862. In *People ex rel. v. Webster*, 8 Misc. 132, Wright, J., says: "A special statute making the provisions of a general statute applicable to a local court is not affected by the repeal of the general statute." In *Wick v. Fort Plain and Richfield Springs Ry. Co.*, 27 App. Div. 577, the court held that "a statute which refers to and adopts the provisions of a prior statute is not repealed by the subsequent repeal of the prior statute, but the provisions of the incorporated statute continue in force so far as they form a part of the second statute."

§ 182. Vacancies in boards of trustees.—Any vacancies occurring in the said board of trustees shall be supplied by the remaining trustees at any legal meeting of the members; but there shall always be at least five members of the board who are not ministers of the gospel or priests of any denomination.

Source.—L. 1854, ch. 218, § 3.

§ 183. Seats and pews to be free.—The seats and pews in every church, building or edifice, owned or occupied by any corporation organized under this article, shall be forever free for the occupation and use, during public worship, of all persons choosing to occupy the same, and conducting themselves with propriety, and no rent, charge or exaction shall ever be made or demanded for such occupation or use.

Source.—L. 1854, ch. 218, § 4.

ARTICLE X.

OTHER DENOMINATIONS.

- Section 190. Application of this article.
- 191. Notice of meeting for incorporation.
 - 192. The meeting for incorporation.
 - 193. The certificate of incorporation.
 - 194. Time, place and notice of corporate meetings.
 - 195. Organization and conduct of corporate meetings; qualifications of voters thereat.
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 - 201. Trustees of a church in connection with the United Brethren in Christ.
 - 202. Trusts for Shakers and Friends.
 - 203. Conveyance of trust property of Friends.
 - 204. Conveyance of property of Methodist Episcopal churches for church, school or missionary purposes.
 - 205. Presiding officer.
 - 206. Transfer of church property.

§ 190. Application of this article.—This article is not applicable to a Baptist church, a Congregational or Independent church, a Protestant Episcopal church, a Roman Catholic church, a Presbyterian church in connection with the General Assembly of the Presbyterian Church in the United States of America, a Christian Orthodox Catholic church of the Eastern Confession, or a Ruthenian Greek Catholic church. No provision of this article is applicable to a Reformed church in America, a True Reformed Dutch church in the United States of America, a Reformed Presbyterian church, or to an Evangelical Lutheran church, incorporated after October first, eighteen hundred and ninety-five, except as declared to be so applicable by article six of this chapter; this article is applicable to an Evangelical Lutheran church incorporated before October first, eighteen hundred and ninety-five, if the trustees thereof were then elective as such and so long as they continue to be elective as such. Article six of this chapter is applicable to an Evangelical Lutheran church incorporated before October first, eighteen hundred and ninety-five, if its trustees were not then elective as such and so long as its trustees continue not to be elective as such. This article is applicable to churches of all other denominations. (*Amended by L. 1917, ch. 353, in effect May 3, 1917.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 80, as amended by L. 1896, chs. 35, 190 and 336; L. 1897, ch. 621, and L. 1902, ch. 97; section was new in former Religious Corporations Law.

General synod of Reformed Protestant Dutch Church incorporated by L. 1819, ch. 110.

§ 191. Notice of meeting for incorporation.—Notice of a meeting for the purpose of incorporating an unincorporated church, to which this article is applicable, shall be given as follows:

The notice shall be in writing, and shall state, in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour, for the purpose of incorporating such church and electing trustees thereof.

The notice must be signed by at least six persons of full age, who are then members in good and regular standing of such church by admission into full communion or membership therewith, in accordance with the rules and regulations of such church, and of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or who have statedly worshiped with such church and have regularly contributed to the financial support thereof during the year next prior thereto, or from the time of the formation thereof.

A copy of such notice shall be posted conspicuously on the outside of the main entrance to such place of worship, at least fifteen days before the day so specified for such meeting, and shall be publicly read at each of the two next preceding regular meetings of such unincorporated church for public worship, at least one week apart, at morning service, if such service be held, on Sunday, if Sunday be the day for such regular meetings, by the first named of the following persons who is present thereat, to wit: The minister of such church, the officiating minister thereof, the elders thereof in the order of their age beginning with the oldest, the deacons of the church in the order of their age beginning with the oldest, any persons qualified to sign such notice.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 81; originally revised from L. 1813, ch. 60, § 3, as amended by L. 1890, ch. 66; L. 1868, ch. 803, § 4.

§ 192. The meeting for incorporation.—At the meeting for incorporation held in pursuance of such notice, the following persons, and no others, shall be qualified voters, to wit: All persons of full age, who are then members in good and regular standing of such church by admission into full communion or membership therewith, in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, if any, of the denomination or order, to which the church belongs, or who have statedly worshiped with such church and have regularly contributed to the financial support thereof during the year next preceding such meeting, or from the time of the formation thereof.

The presence of a majority of such qualified voters, at least six in number, shall be necessary to constitute a quorum of such meeting. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present.

The first named of the following persons who is present at such meeting shall preside thereat, to wit: The minister of the church, the officiating

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minister thereof, the elders thereof in the order of their age, beginning with the oldest, the deacons thereof in the order of their age, beginning with the oldest, any qualified voter elected to preside. The presiding officer of the meeting shall receive the votes, be the judge of the qualifications of voters and declare the result of the votes cast on any matter. The polls of the meeting shall remain open for one hour, and longer, in the discretion of the presiding officer, or if required by a majority of the voters present.

Such meeting shall decide whether such unincorporated church shall become incorporated. If such decision shall be in favor of incorporation such meeting shall decide upon the name of the proposed corporation, the number of the trustees thereof, which shall be three, six or nine, and shall determine the date, not more than fifteen months thereafter, on which the first annual election of the trustees thereof after such meeting shall be held. Such meeting shall elect from the persons qualified to vote at such meeting, one-third of the number of trustees so decided on who shall hold office until the first annual election of trustees thereafter, one-third of such number of trustees to hold office until the second annual election of trustees thereafter, and one third of such number of trustees to hold office until the third annual election of trustees thereafter.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 82; originally revised from L. 1813, ch. 60, § 3, as amended by L. 1890, ch. 66, and § 6; L. 1876, ch. 329, §§ 2-4.

§ 193. The certificate of incorporation.—The presiding officer of such meeting and at least two other persons present and voting thereat, shall execute and acknowledge a certificate of incorporation, setting forth the matters so determined at such meeting, the trustees elected thereat and the terms of office for which they were respectively elected and the county, town, city or village in which its principal place of worship is or is intended to be located. On filing such certificate the members of such church and the persons qualified to vote at such meeting and who shall thereafter, from time to time, be qualified voters, at the corporate meetings thereof, shall be a corporation by the name stated in such certificate, and the persons therein stated to be elected trustees of such church shall be the trustees thereof, for the terms for which they were respectively so elected.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 83; originally revised from L. 1813, ch. 60, § 3, as amended by L. 1890, ch. 66; L. 1876, ch. 329, § 5.

References.—Place of filing certificate. See § 3, ante. General provisions as to certificates. See General Corporation Law, §§ 4-9.

See *Lynch v. Pfeiffer* (1888), 110 N. Y. 33, 17 N. E. 402, as to sufficiency of certificate.

§ 194. Time, place and notice of corporate meetings.—The annual corporate meeting of every incorporated church to which this article is applicable, shall be held at the time and place fixed by or in pursuance of law therefor, if such time and place be so fixed, and otherwise, at a time and

place to be fixed by its trustees. A special corporate meeting of any such church may be called by the board of trustees thereof, on its own motion or on the written request of at least ten qualified voters of such church. The trustees shall cause notice of the time and place of its annual corporate meeting, therein specifying the names of any trustees, whose successors are to be elected thereat, and, if a special meeting, specifying the business to be transacted thereat, to be given at a regular meeting of the church for public worship, at morning service, if such service be held, on each of the two successive Sundays next preceding such meeting, if Sunday be the regular day for such public worship, and public worship be had thereon, or otherwise at a regular meeting of such church for public worship on each of two days, at least one week apart, next preceding such meeting, or if no such public worship be held during such period, by conspicuously posting such notice, in writing, upon the outer entrance to the principal place of worship of such church. Such notice shall be given by the minister of the church, if there be one, or if not, by the officiating minister thereof, if there be one, or if not, or if any such minister refuse to give such notice, by any officer of such church. But a special corporate meeting of an incorporated Presbyterian church, to elect a pastor of such church or to take action in reference to the dissolution of the relations of the pastor and the church, may be called only by the session of such church. They may call such meeting whenever they deem it advisable to do so, or upon the request to them, by petition, of a majority of the qualified voters of such corporation, they must call such meeting. They shall give notice of such meeting in either case, in the manner in this section provided in a notice of a special meeting.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 84; originally revised from L. 1813, ch. 60, § 6, and § 9, as amended by L. 1886, ch. 414; L. 1826, ch. 47, § 1, as amended by L. 1875, ch. 354; L. 1875, ch. 79, § 1, as amended by L. 1879, ch. 463; L. 1876, ch. 329, § 3.

Mandamus of rector to give notice of meeting. *Maclaury v. Hart* (1890), 32 N. Y. St. Rep. 1137, 10 N. Y. Supp. 125, revd. (1890), 121 N. Y. 636, 24 N. E. 1013.

Notice of meeting for election of trustees not invalid because it also contained notice that a class meeting would be held on same day in connection with the said meeting, there being nothing to show that the rights of any persons entitled to attend were affected. *People ex rel. Wilson v. African W. M. E. Church* (1913), 156 App. Div. 386, 141 N. Y. Supp. 294.

§ 195. Organization and conduct of corporate meetings; qualification of voters thereat.—At a corporate meeting of an incorporated church to which this article is applicable the following persons, and no others, shall be qualified voters, to wit: All persons of full age, who are then members in good and regular standing of such church by admission into full communion or membership therewith in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, if any, of the denomination or order to which the church belongs, or who have been stated attendants on divine worship in such church and have regularly contributed to the financial support thereof during the year next preced-

ing such meeting; and any incorporated church in connection with the Congregational denomination or with the denomination known as Disciples of Christ, or any other church incorporated under this article, may at any annual corporate meeting thereof, or any corporate meeting called pursuant to the provisions of this article, if notice of the intention so to do has been given with the notice of such meeting, determine that thereafter only members of such church shall be qualified voters at corporate meetings thereof. The presence at such meetings of at least six persons qualified to vote thereat shall be necessary to constitute a quorum. The action of the meeting upon any matter or question shall be decided by a majority of the qualified voters voting thereon, a quorum being present. The first named of the following persons who is present at such meeting shall preside thereat, to wit: The minister of such church, the officiating minister thereof; the officers thereof in the order of their age beginning with the oldest, any qualified voters elected therefor at the meeting. The presiding officer of the meeting shall receive the votes, be the judge of qualifications of voters and declare the result of the votes cast on any matter. The polls of an annual corporate meeting shall continue open for one hour, and longer in the discretion of the presiding officer, or if required by a majority of the qualified voters present. At each annual corporate meeting, successors to those trustees whose terms of office then expire, shall be elected from the qualified voters by ballot, for a term of three years thereafter; provided, however, that any Methodist Episcopal church in the boroughs of Brooklyn and Queens, in the city of New York, which is now or hereafter may become a beneficiary of the Brooklyn church society of the Methodist Episcopal church, by receiving from said society contributions to its current income, or by loan or gift from the same, may elect to fill any vacancy existing in its board of trustees by expiration of term, or for any other cause, at any corporate meeting legally called, not to exceed at any time three members of said board of trustees, who shall have been nominated to such positions by the Brooklyn church society of the Methodist Episcopal church, without regard to any qualifications for trustees required by this chapter, and such trustees or their successors, nominated and elected in the same manner, shall continue in office so long as said church shall be a beneficiary of said society. Notice of the expiration of term of said trustees shall be given by the said church to the said society not less than two months before said expiration of term. (*Amended by L. 1911, ch. 711, and L. 1916, ch. 210.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 85, as amended by L. 1896, chs. 324 and 969; L. 1900, ch. 206, and L. 1908, ch. 362; originally revised from L. 1813, ch. 60, § 3, as amended by L. 1890, ch. 66, § 6; § 7, as amended by L. 1875, ch. 597, § 14; L. 1876, ch. 329, § 4.

References.—As to rights of voters and legality of election, see cases cited under § 43, ante. See General Corporation Law, §§ 23–27.

§ 196. **Changing date of annual corporate meetings.**—An annual corpo-

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rate meeting of an incorporated church to which this article is applicable, may change the date of its annual meeting thereafter. If such date shall next thereafter occur less than six months after the annual meeting at which such change is made, the next annual meeting shall be held one year from such next recurring date. For the purpose of determining the terms of office of trustees, the time between the annual meeting at which such change is made and the next annual meeting thereafter shall be reckoned as one year.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 86; originally revised from L. 1826, ch. 47, § 3; L. 1875, ch. 79, § 1, as amended by L. 1879, ch. 463.

§ 197. **Changing number of trustees.**—An incorporated church to which this article is applicable, may, at an annual corporate meeting, change the number of its trustees to three, six, nine or twelve, or classify them so that the terms of one-third expire each year. No such change shall affect the terms of the trustees then in office, and if the change reduces the number of trustees, it shall not take effect until the number of trustees whose terms of office continue for one or more years after an annual election is less than the number determined on. Whenever the number of trustees so holding over is less than the number so determined on, trustees shall be elected in addition to those so holding over, sufficient to make the number of trustees for the ensuing year equal to the number so determined on. The trustees so elected up to and including one-third of the number so determined on, shall be elected for three years, the remainder up to and including one-third of the number so determined on for two years, and the remainder for one year. (*Amended by L. 1910, ch. 249.*)

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 87; originally revised from L. 1813, ch. 60, § 9, as amended by L. 1886, ch. 414.

§ 198. **Meetings of trustees.**—Two of the trustees of an incorporated church, to which this article is applicable, may call a meeting of such trustees, by giving at least twenty-four hours' notice thereof personally or by mail to the other trustees. A majority of the trustees lawfully convened shall constitute a quorum for the transaction of business. In case of a tie vote at a meeting of the trustees, the presiding officer of such meeting shall, notwithstanding he has voted once, have an additional casting vote.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 88; originally revised from L. 1813, ch. 60, § 5; L. 1875, ch. 329, § 5.

§ 199. **Vacancies among trustees.**—If any trustee of an incorporated church to which this article is applicable, declines to act, resigns or dies, or having been a member of such church, ceases to be such member, or not having been a member of such church, ceases to be a qualified voter at a corporate meeting thereof, his office shall be vacant, and such vacancy may be filled by the remaining trustees until the next annual corporate meeting of

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such church, at which meeting the vacancy shall be filled for the unexpired term.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 89; originally revised from L. 1813, ch. 60, § 6; L. 1875, ch. 79, § 2; L. 1876, ch. 329, § 7.

§ 200. Control of trustees by corporate meetings; salaries of ministers.—A corporate meeting of an incorporated church, whose trustees are elective as such, may give directions, not inconsistent with law, as to the manner in which any of the temporal affairs of the church shall be administered by the trustees thereof; and such directions shall be followed by the trustees. The trustees of an incorporated church to which this article is applicable, shall have no power to settle or remove or fix the salary of the minister, or without the consent of a corporate meeting, to incur debts beyond what is necessary for the care of the property of the corporation; or to fix or * charge the time, nature or order of the public or social worship of such church, except when such trustees are also the spiritual officers of such church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 90; originally revised from L. 1813, ch. 60, § 8; L. 1876, ch. 329, § 6.

§ 201. Trustees of a church in connection with the United Brethren in Christ.—If any church connected with the denomination known as the United Brethren in Christ shall neglect or omit to elect trustees at any annual election at which trustees should have been elected, the quarterly conference of the circuit, station or mission of such denomination may elect such trustees for full terms, or to fill vacancies, in accordance with the rules and usages of such denomination.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 91; originally revised from L. 1826, ch. 47, § 1, as amended by L. 1875, ch. 354.

§ 202. Trusts for Shakers and Friends.—All deeds or declarations of trust of real or personal property, executed and delivered before January first, eighteen hundred and thirty, or since May fifth, eighteen hundred and thirty-nine, to any person in trust for any United Society of Shakers, or heretofore executed and delivered to any person or persons in trust for any meeting of the Religious Society of Friends, or any of the purposes thereof, and the legal estates, interests and trusts purported to be conveyed, created or declared thereby, shall be valid. Trusts of real or personal property, for the benefit and use of the members of any United Society of Shakers, or of any meeting of the Religious Society of Friends, or any of the purposes thereof, may hereafter be created, according to the religious constitution of such society of Shakers, or the regulations and rules of discipline of such society of Friends. Such deeds or declarations of trust, heretofore or hereafter executed and delivered, shall vest in the trustees the legal estates and interests purported to be conveyed or declared

* So in original.

thereby, to and for the uses and purposes declared therein; and such legal estates and trusts, and all legal authority with which the original trustees were vested by virtue of their appointment and conferred powers, shall descend to their successors in office or trust, who may be chosen in conformity to the constitution of such society, or the directions of such meeting. In case of the death of all the trustees of any trust for the benefit of any meeting of the Religious Society of Friends or any of the purposes thereof, heretofore appointed, or who may be hereafter appointed by virtue of this section, any such meeting may appoint a trustee or trustees in place of such person or persons, and the person or persons thus appointed by such meeting shall succeed to, and be invested with, all the powers, rights and duties conferred by this section and the deed or declaration of trust upon the trustee or trustees. In case of the consolidation of two or more meetings of the Religious Society of Friends into one meeting, all real and personal property held in trust for either or any of the meetings so consolidated, or any of the purposes thereof, shall continue to be vested in the trustees holding the same at the time of such consolidation, until their successors shall be chosen as above provided. Such consolidated meeting shall have the same rights, powers and duties in respect to such property, estates and trusts and in respect to the appointment of such trustees and their successors as the meetings so consolidated or either of them previously had. This section does not impair or diminish the rights of any person, meeting or association claiming to be a meeting of the Religious Society of Friends, which such person, meeting, or association claiming to be a meeting, had to any real or personal property held in trust for the use and benefit of any meeting of such society, before the division of such society which took place at the annual meeting held in the city of New York in May, eighteen hundred and twenty-eight. No society of Shakers shall become beneficially interested in real or personal property, the clear annual value or income of which exceeds twenty-five thousand dollars. No meeting of the Religious Society of Friends shall become beneficially interested in real or personal property, the clear annual value or income of which exceeds fifty thousand dollars. No person shall be a trustee at the same time of more than one society of Shakers or meeting of Friends. A society of Shakers includes all persons of the religious belief of the people called Shakers, resident within the same county.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 92, as amended by L. 1907, ch. 199; originally revised from L. 1839, ch. 174, as amended by L. 1852, ch. 203; L. 1839, ch. 184, as amended by L. 1878, ch. 209, and L. 1880, ch. 337.

The Shaker community may be sued through its trustees. *White v. Miller* (1877), 71 N. Y. 118.

§ 203. **Conveyance of trust property of Friends.**—The trustee or trustees, or survivor of any trustees, of any meeting of the Religious Society of Friends, appointed pursuant to the last preceding section, may sell, convey and grant, or demise any or all of the trust property described in said trust

deed or declaration of trust, to any person absolutely or in trust for such meeting, whenever any meeting of said society by resolution so directs. Any conveyance of real estate or property so held in trust by any meeting of the Religious Society of Friends, which is hereafter made in pursuance of a resolution of such meeting as provided herein, shall be as valid and effectual for the conveyance of the title of any real estate so held in trust, as if the heirs of any trustee who has died prior to the passage of such resolution had joined in the execution of such conveyance or demise. Any instrument for the sale or demise of such property shall embody such resolution, and be executed and acknowledged by such trustee or trustees; and in such acknowledgment such trustee or trustees shall make an affidavit that the person or persons executing such conveyance or demise are the trustee or trustees of the trust property, and that the resolution embodied in such conveyance or demise was duly passed by such meeting. Such affidavit shall be prima facie evidence of the facts therein stated.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 93, as amended by L. 1907, ch. 199; originally revised from L. 1839, ch. 184, § 4, as added by L. 1878, ch. 209.

§ 204. Conveyance of property of Methodist Episcopal churches for church, school or missionary purposes.—Any church or society of the Methodist Episcopal church created by or existing under the laws of the state of New York, having its principal office or place of worship in the state of New York, or whose place of worship was within the state of New York, is hereby authorized and empowered by the concurrent vote of two-thirds of its qualified voters present and voting therefor, at a meeting regularly called for that purpose, and of two-thirds of all its trustees, to direct the transfer and conveyance of any of its property, real or personal, which it now has or may hereafter acquire, to any religious, charitable or missionary corporation connected with the Methodist Episcopal denomination and incorporated by or organized under any law of the state of New York, either solely, or among other purposes, to establish or maintain, or to assist in establishing or maintaining churches, schools, or mission stations, or to erect or assist in the erection of such buildings as may be necessary for any such purposes, with or without the payment of any money or other consideration therefor; and upon such concurrent votes being given, the trustees shall execute such transfer or conveyance; and upon the same being made, the title to and the ownership and right of possession of the property so transferred and conveyed shall be vested in and conveyed to such grantee; provided, however, that nothing herein contained shall impair or affect in any way any existing claim upon or lien against any property so transferred or conveyed, or any action at law or legal proceeding; and such transfer shall be subject, in respect to the amount of property the said grantee may take and hold, to the restrictions and limitations of all laws then in force.

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Other denominations.

§§ 205, 206.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 93-a, as added by L. 1904, ch. 344.

§ 205. **Presiding officer.**—Nothing contained in this article shall prevent the qualified voters at any meeting held pursuant to this article or in this article described, from choosing a person to preside at any such meeting, other than the person or officer designated in this article to preside thereat, and when such other person shall be chosen he shall exercise all the powers in this article conferred upon the presiding officer of such meeting.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 94, as added by L. 1897, ch. 144.

§ 206. **Transfer of church property.**—Any Church of Christ (Disciples) or Church of Christ (Disciples) religious societies becoming extinct or about to disband or disorganize may, by a vote of two-thirds of its members present and voting therefor at a meeting regularly called for that purpose assign, transfer, grant and convey, for a nominal consideration only, but subject to the debts, if any, of the church or society, all its property, both real and personal, to and place the same in the possession of the New York Christian Missionary Society existing under the laws of the state of New York. Any Church of Christ (Disciples) or Church of Christ (Disciples) religious society which has failed for two consecutive years next prior thereto to maintain religious services according to the custom and usages of Churches of Christ (Disciples), or has less than thirteen resident attending members, paying annual pew rental or making annual contributions towards its support, may be declared extinct in the following manner, to wit: Upon such notice as the court may prescribe, and upon application made by petition, stating fully the facts in the case, and on evidence being furnished that the said Church of Christ (Disciples) or Church of Christ (Disciples) religious society has ceased to hold religious services in and use its property for religious worship or service for a term of two years previous to such application, the supreme court at a term thereof held in the judicial district where such property is situated may grant an order declaring such church or society extinct, and thereon direct that all its property, both real and personal, shall be transferred to, and thereupon shall be taken possession of by the New York Christian Missionary Society of the state of New York, or directing that the same be sold in the manner directed by said order, and that the proceeds thereof, after the payment of the debts of such church or society, be paid over to the New York Christian Missionary Society of the state of New York. Such order shall operate to transfer the interest of such extinct church or society in such property or proceeds to such New York Christian Missionary Society. All property and proceeds from the sale of property so transferred to such association shall be used and applied for the purposes for which such New York Christian Mis-

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sionary Society of the state of New York was organized and shall not be used for or applied to any other purpose. Nothing in this section, however, shall be construed to impair or in any way affect any existing claim upon or lien against any property so transferred or conveyed, or any action at law or legal proceeding. (*Added by L. 1916, ch. 450.*)

ARTICLE XI.

UNION CHURCHES.

Section 220. Joint meeting for the purposes of incorporation.

221. Government of incorporated union churches.

§ 220. Joint meeting for the purposes of incorporation.—Two or more unincorporated churches, which separately agree on a plan of union and determine to meet together for the purpose of being incorporated as a union church, may be incorporated as a union church in pursuance of the provisions of article ten, and thereafter such union church shall be governed by the general provisions of such article, as near as may be, except as otherwise provided in this article. A notice of such joint meeting shall be given to the congregation of each church, in pursuance of the provisions of article ten of this chapter, relating to notice of meeting for incorporations, in every respect as if it were a notice of a meeting for the separate incorporation of such church under such article, except that the notice shall state in substance that a joint meeting of such unincorporated churches, which shall be specified in the notice, will be held for the purpose of incorporating such churches as a union church, and electing trustees thereof at a time and place specified in the notice, which place may be the usual place of worship of either of such churches or any other reasonably convenient place. Such notice must be signed by at least six persons from each of such churches who would be authorized to sign a notice for the meeting of each church, respectively, for the purpose of incorporating it under such article.

The provisions of article ten hereof shall be applicable to the organization and conduct of such meeting, the matters to be determined upon and the certificate of incorporation to be executed and filed accordingly, except that the presiding officer of such joint meeting shall be the oldest person present at such meeting who would be entitled to preside at a meeting of either of such churches singly for the purposes of incorporation in pursuance of such article. All persons who would be qualified to vote at such meeting of either of such churches held singly, shall be qualified voters at such joint meeting, and the number of trustees of the union church after incorporation, to be selected from each such church, may be agreed on by such unincorporated churches, and the trustees shall be selected by each of such churches accordingly.

The certificate of incorporation shall set forth the plan of union agreed

on and the number of trustees of the incorporated union church to be selected by each unincorporated church.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 100; originally revised from L. 1881, ch. 327, § 1.

§ 221. Government of incorporated union churches.—Any union church or society having a common place of worship or holding property belonging jointly to the several societies composing the same, but the sole right of occupancy of which is reserved to each of them in proportion to their interest in such property, or the money originally paid therefor by each, or in accordance with their plan of union agreed on, may, if any one or more of the churches or societies comprising such union church or society has ceased to exist, on the request of such remaining churches or society, redistribute and divide the time of occupancy among such remaining societies in proportion to their contributions to such property respectively, or in accordance with a new plan of union agreed on by them. Such redistribution shall be made by the trustees of said union church or society on written notice to the societies which it is alleged have ceased to exist; but no such society shall be deemed to have ceased to exist unless it has failed or neglected for a period of five consecutive years next preceding such request for redistribution, to hold meetings and have a clerk or secretary, and keep a list or registry of its members, or to have preaching, prayer or conference meetings, or other religious services in keeping with the usages of the denomination to which it belongs.

Any one of the societies composing a union church or society, which shall have built a church edifice in the same village or neighborhood in which it holds its religious services, shall not thereby lose or forfeit in any way any of its rights or privileges in such union society, and the maintaining of divine worship, or contributing to its support in its own building, shall be regarded the same as if it held its meetings in the church building of such union society. Any notice for the election of trustees of the union society or for any other purpose which the law requires to be read or given at the time of divine service, may be read or given in the church edifice so built by any one of such societies, if at the time religious services are not held in the church edifice of such union society. But such notice must be posted on the outer door of such union church edifice at least fifteen days before the meeting. If any society composing any such church union or society has a greater interest in the occupancy of the church building than others, unless the several churches composing the union church or society have agreed otherwise, the number of trustees shall be odd, and the trustees shall be elected from such societies in proportion to their respective interests in the union, church or society, as nearly as may be. Any society composing such union church or society, which has built for itself a church edifice and become incorporated, may sell its interest and right of occupancy in such union society,

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and convey the same, when authorized so to do by a two-thirds vote of the voters thereof qualified to vote for union trustees, at a special meeting called for that purpose. The proceeds of such sale shall be used for the benefit of its church property.

Source.—Former Religious Corp. L. (L. 1895, ch. 723) § 101; originally revised from L. 1881, ch. 327.

ARTICLE XII.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 260. Laws repealed.

261. When to take effect.

§ 260. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 261. **When to take effect.**—This chapter shall take effect immediately.

ARTICLE XIII.

(Article added by L. 1914, ch. 485.)

SPIRITUALIST CHURCHES.

§ 262. **Application.**—This article applies only to a Spiritualist church in connection with the General Assembly of Spiritualists. (*Added by L. 1914, ch. 485.*)

§ 263. **Incorporation of unincorporated Spiritualist churches and system of incorporating and government.**—A meeting for the purpose of incorporating an unincorporated Spiritualist church in connection with the General Assembly of Spiritualists must be called and held in pursuance of the provisions of this article:

1. The notice and call of such meeting shall be in writing and shall state in substance, that a meeting of such unincorporated church will be held at its usual place of worship at a specified day and hour for the purpose of incorporating such church and designating trustees thereof.

2. The notice must be signed at least by seven persons of full age who are then members in good and regular standing of such church by admission into full membership therewith, in accordance with the rules and regulations of such church, and who have in good faith expressed in open meeting their belief in the tenets of faith adopted by the General Assembly of Spiritualists.

3. The notice must have endorsed thereon the approval of the body of the General Assembly of Spiritualists governing the admission of churches.

4. A copy of such notice with the approval endorsed thereon shall be

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publicly read at a regular meeting of such unincorporated church for public worship, on the two successive Sundays immediately preceding the meeting by any person qualified to sign such notice. (*Added by L. 1914, ch. 485.*)

§ 264. **Meeting for incorporation.**—At the meeting for incorporation, held in pursuance to such notice, the qualified voters unless otherwise decided as hereinafter provided shall all be persons of full age who have worshipped with such church, and have regularly contributed to its support according to its usages, for at least one year or since it was formed, and who have in good faith in open meeting expressed their belief in the tenets of faith adopted by the General Assembly of Spiritualists. At such meeting the presence of a majority of such qualified voters, at least seven in number, shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon. The meeting shall be called to order by a person delegated so to do by the president of the General Assembly of Spiritualists. There shall be elected at such meeting, from the qualified voters then present a presiding officer, a clerk to keep the records of the proceedings of the meeting and two inspectors of election to receive the ballots cast. The presiding officer and the inspectors shall decide the result of the ballots cast on any matter, and shall be the judges of the qualifications of the voters. If the meeting shall decide that such unincorporated church shall become incorporated, the meeting shall also decide upon the name of the proposed corporation, the number of the trustees thereof, which shall be three, six or nine, and the date, not more than fifteen months thereafter, on which the first annual election of the trustees thereof shall be held; and it may, by a two-thirds vote, decide that all members of the unincorporated church, of full age, in good and regular standing, who have worshipped with such church but who have not contributed to the financial support thereof, shall also be qualified voters at such meeting. Such meeting shall thereupon elect by ballot from the persons qualified to vote thereat, of the number of trustees so decided on who shall hold office until the first annual election of trustees thereafter, one-third of such number of trustees who shall hold office until the second annual election of trustees thereafter, and one-third of such number of trustees who shall hold office until the third annual election of trustees thereafter, or until the respective successors of such trustees shall be elected. Such meeting shall also elect by ballot a clerk or secretary of the corporation, who shall hold his office until the close of the next annual meeting. (*Added by L. 1914, ch. 485.*)

§ 265. **The certificate of incorporation.**—If the meeting shall decide that such unincorporated church shall become incorporated, the presiding officer of such meeting and the two inspectors of election shall execute a certificate setting forth the name of the proposed corporation, the number of trustees thereof, the names of the persons elected as trustees, the terms of office for

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which they were respectively elected, and the county or town, city or village in which its principal place of worship is, or is intended to be located. The name of such church as adopted shall bear the words "in connection with the General Assembly of Spiritualists." On the filing and recording of such certificate, after it shall have been acknowledged or proved as heretofore provided, the persons qualified to vote at such meeting and those persons who shall thereafter, from time to time be qualified voters at the corporate meetings thereof, shall be a corporation by the name stated in such certificate, and the persons therein stated to be elected trustees of such church shall be the trustees thereof for the terms for which they were respectively elected and until their respective successors shall be elected. (*Added by L. 1914, ch. 485.*)

§ 266. **Time, place and notice of corporate meetings.**—The annual corporate meeting of every church incorporated under this article shall be held at the time and place fixed by its by-laws, or if no time and place be so fixed then at a time and place to be first fixed by its trustees, but to be changed only by a by-law adopted at an annual meeting. A special corporate meeting shall be called by the board of trustees thereof, on its own motion, and shall be called on the written request of at least seven qualified voters of such church. The trustees shall cause notice of the time and place of its annual corporate meeting, and of the names of any trustees whose successors are to be elected thereat, and if a special meeting, of the business to be transacted thereat, to be publicly read by the presiding officer of such church or any trustees thereof at a regular meeting of the church for public worship, on the two successive Sundays immediately preceding such meeting. (*Added by L. 1914, ch. 485.*)

§ 267. **Organization and conduct of corporate meetings; qualifications of voters.**—At every corporate meeting of a church incorporated under this article all persons of full age, who for one year next preceding such meeting have worshipped with such church and have regularly contributed to its financial support, according to its usages, shall be qualified voters; but, if so decided, by a two-thirds vote at the original meeting or at any annual corporate meeting thereof, after notice of such meeting all members of such church of full age and in good and regular standing, by admission to membership therewith, who have worshipped with such church for one year next preceding the meeting at which they vote, may also be admitted as qualified voters at corporate meetings. At such corporate meetings, the presence of at least seven persons qualified to vote thereat shall be necessary to constitute a quorum; and all matters or questions shall be decided by a majority of the qualified voters voting thereon, except that by-laws can only be adopted or amended by a two-thirds vote. The clerk or secretary of the corporation shall call the meeting to order; and under his supervision the qualified voters then present shall choose a presiding officer and two inspectors of election to receive the ballots cast. The presiding officer

and the inspectors of election shall declare the result of the ballots cast on any matter and shall be the judges of the qualifications of the voters. At such annual corporate meeting, successors to those trustees whose terms of office then expire shall be elected by ballot from the qualified voters, for a term of three years thereafter, and until their successors shall be elected. A clerk or secretary of the corporation shall be elected by ballot, who shall hold office until the close of the next annual meeting, and until his successor shall be elected. (*Added by L. 1914, ch. 485.*)

§ 268. **Election and salary of ministers.**—The ministerial and clerical attendants of any such church shall be called, elected and removed and their salaries fixed as such corporation in its by-laws shall provide, but no such church shall call, or elect any such person to perform any of the duties of minister or clerical attendant who has not been regularly commissioned so to act by the General Assembly of * Spiritualists according to its rules, after examination into the character and qualifications of such person by its committees regularly appointed, nor shall any such church retain any person as its minister or clerical attendant after it has been regularly notified that such person has been suspended or removed according to the rules and regulations of the General Assembly of Spiritualists covering such matters. (*Added by L. 1914, ch. 485.*)

§ 269. **Duties of ministers, et cetera.**—Ministers and clerical attendants shall perform such duties as the by-laws shall direct in accordance with the rules and regulations of the General Assembly of Spiritualists. (*Added by L. 1914, ch. 485.*)

§ 270. **Reincorporation of present incorporated Spiritualist churches.**—Any Spiritualist church heretofore incorporated may reincorporate under the provisions of this article by filing in the county clerk's office of the county in which its principal place of worship is located, a certificate that at a special meeting held pursuant to the provisions of section two hundred and sixty-six of this article, that such church had by two-thirds vote of the members present and qualified to vote, duly voted to reincorporate under the provisions hereof. Such certificate shall be signed by the presiding officer and two inspectors of election acting thereat and shall be acknowledged, and shall bear the indorsement and consent of the body of the General Assembly of Spiritualists governing admission of churches. The name of such church shall thereafter have affixed the words "in connection with the General Assembly of Spiritualists." (*Added by L. 1914, ch. 485.*)

§ 271. **Effect of reincorporation.**—Any church incorporating or reincorporating under this article shall be subject to the rules and regulations of the General Assembly of Spiritualists relating to affiliated churches. (*Added by L. 1914, ch. 485.*)

* So in original.

§ 272. **Definition.**—The word church as used herein shall mean any church or society organized for the purpose of worshipping as Spiritualists as a religion. (*Added by L. 1914, ch. 485.*)

§ 273. **Effect.**—This act shall take effect immediately. (*Added by L. 1914, ch. 485.*)

SCHEDULE OF LAWS REPEALED.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1784	18	All	1875	597	All
(7th Sess.)			1876	110	All
1788	61	All	1876	176	All
(11th Sess.)			1876	329	All
1798	87	All	1877	177	All
(21st Sess.)			1878	209	All
1800	49	All	1878	349	All
(23d Sess.)			1879	117	All
1801	79	1-11	1879	136	All
1806	43	All	1879	463	All
1808	105	2	1880	55	All
1812	85	All	1880	167	All
R. L. 1813	60	All	1880	337	All
1814	1	6	1881	327	All
1819	33	All	1881	501	All
1822	187	All	1882	23	All
1825	303	All	1883	501	All
1826	47	All	1884	198	All
1835	90	8-11	1885	208	All
1839	174	All	1885	431	All
1839	184	All	1886	16	All
1842	153	All	1886	98	All
1842	215	All	1886	209	All
1844	158	All	1887	100	All
1849	373	All	1887	406	All
1850	122	All	1887	600	All
1852	203	All	1888	459	All
1853	323	All	1890	50	All
1854	218	All	1890	66	All
1855	230	All	1890	424	All
1860	235	All	1894	72	All
1862	147	All	1895	607	All
1863	45	All	1895	723	All
1866	414	All	1896	35	All
1866	447	All	1896	56	All
1867	265	All	1896	190	All
1867	656	All	1896	308	All
1867	657	All	1896	324	All
1868	784	All	1896	336	All
1868	803	All	1896	337	All
1869	171	All	1896	525	All
1871	12	All	1896	969	All
1871	776	All	1897	35	All
1872	424	All	1897	144	All
1873	633	All	1897	238	All
1874	26	All	1897	621	All
1874	37	All	1898	248	All
1875	79	All	1898	358	All
1875	209	All	1898	473	All
1875	325	All	1898	543	Part
1875	354	All	relating to religious corporations		
1875	381	All	1899	720	All
1875	408	All	1900	206	All
1875	443	All	1900	521	All

L. 1909, ch. 53.

Consolidators' notes.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1901	222	All	1905	193	All
1902	97	All	1905	324	All
1902	208	All	1906	525	All
1902	365	All	1907	199	All
1903	314	All	1907	728	All
1904	85	All	1908	362	All
1904	344	All	1908	363	All
1905	46	All			

CONSOLIDATORS' NOTES TO SCHEDULES OF REPEALS.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1854, ch. 218.—Provides for incorporation of free churches, consolidated in Religious Corporations Law as new article 9, as follows: Section 1 as § 180; section 2 as § 181; section 3 as § 182; section 4 as § 183. Superior court of New York is abolished. Part in relation to mortgaging and selling of property is otherwise covered by Religious Corporations Law, § 12.

L. 1872, ch. 424.—Provides for the dissolution of religious corporations. Consolidated in Religious Corporations Law, § 18.

L. 1885, ch. 208, dependent act, amends L. 1873, ch. 633, which was repealed by L. 1890, ch. 50. Repeal.

L. 1895, ch. 723.—This statute, which is the "old" Religious Corporations Law, is recommended for repeal because all its live provisions have been consolidated in the Religious Corporations Law.

L. 1896, ch. 35.—Repealed by construction, as appears in the schedule, except § 2, which is when to take effect.

L. 1896, ch. 56.—Consolidated in Religious Corporations Law, § 13.

L. 1896, ch. 190.—Section 1 amends an article heading and § 6 is when to take effect. Balance of statute constructively repealed, as appears in the schedule.

L. 1896, ch. 336.—Sections 3, 5, 6, 11 repealed by construction, as appears in the schedule; sections 1, 10, 12, 13 amend article headings; section 14 is when to take effect; balance of statute consolidated in Religious Corporations Law as follows: Section 2 in § 3; section 4 in § 11; section 7 in § 19; section 8 in § 24; section 9 in §§ 130-140.

L. 1896, ch. 525.—Consolidated in Religious Corporations Law, § 6.

L. 1897, ch. 144.—Section 2 consolidated in Religious Corporations Law, § 205. Section 1 repealed by construction, as appears in the schedule, and § 3 is when to take effect.

L. 1897, ch. 35.—Consolidated in Religious Corporations Law, § 3.

L. 1897, ch. 621.—Section 2 repealed by construction, as appears in the schedule; sections 4-6 amend article headings and section 7 of the index of articles; section 8 is when to take effect. Balance of statute consolidated in Religious Corporations Law as follows: Section 1 in § 5; section 3 in §§ 160-171.

L. 1898, ch. 248.—This statute amended L. 1896, ch. 308, which provides for the disposition of the property of extinct free Baptist churches, "to read as follows" and has been consolidated in Religious Corporations Law, § 17.

L. 1898, ch. 358.—Sections 1, 3-6 have been repealed by construction, as appears in the schedule, and § 8 is when to take effect. Balance consolidated in Religious Corporations Law as follows: Section 2 in § 41; section 7 in § 46.

L. 1898, ch. 473.—Authorizing religious societies to establish and maintain homes for their aged members, is amendatory "to read as follows" of L. 1895, ch. 607, and is consolidated in Religious Corporations Law, § 22.

L. 1898, ch. 543, pt.—Section 4, as added to L. 1869, ch. 727, by section 1 of act cited, is consolidated in Religious Corporations Law as § 8, because applied thereto by § 5, as added to said L. 1869, ch. 727, by act cited. All recommended for repeal so far as applicable to religious corporations.

L. 1899, ch. 720.—Section 1 consolidated in Religious Corporations Law, §§ 25-27. Section 2 is when to take effect.

L. 1900, ch. 206.—Consolidated in Religious Corporations Law, § 195.

L. 1902, ch. 97.—Sections 1-5 renumber several articles of the Religious Corporations Law. Balance of statute consolidated in Religious Corporations Law as follows: Section 6 in §§ 60-70; section 7 in § 111; section 8 in § 112; section 9 in § 116; section 10 in § 190. Section 11 is when to take effect.

L. 1902, ch. 208.—Consolidated in Religious Corporations Law, § 12.

L. 1902, ch. 365.—Consolidated in Religious Corporations Law, § 92.

§§ 2, 3. Effect of repeal of amendments of codes. L. 1880, ch. 245.

- L. 1903, ch. 314.—Consolidated in Religious Corporations Law, § 21.
 L. 1904, ch. 344.—Consolidated in Religious Corporations Law, § 204.
 L. 1905, ch. 46.—Consolidated in Religious Corporations Law, § 42.
 L. 1905, ch. 193.—Consolidated in Religious Corporations Law, § 16.
 L. 1905, ch. 324.—Consolidated in Religious Corporations Law, § 9.
 L. 1906, ch. 525.—Consolidated in Religious Corporations Law as follows: Section 1 in § 40; section 2 in § 43; section 3 in § 44; section 4 in § 45. Section 5 is when to take effect.
 L. 1907, ch. 199.—Consolidated in Religious Corporations Law, §§ 202, 203.
 L. 1907, ch. 728.—Consolidated in Religious Corporations Law, § 114.

RENOVATED BUTTER.

Sale regulated; Agricultural Law, § 39.

RENTS RESERVED.

Taxation; Tax Law, § 8. Collection of taxes against; Tax Law, § 75.

REPEALING LAWS.

See also General Construction Law; Consolidated Laws.

There was no important law specifically repealing prior laws before the repealing act of the Revised Statutes (L. 1828, ch. 21). The repealing act of the Revised Acts of 1801, was Rev. Acts 1801, ch. 189; and of the Revised Laws of 1813, was Rev. Laws, 1813, ch. 202. Section 468 of the Code of Procedure repealed inconsistent acts. The Code of Civil Procedure Repealing Acts are L. 1877, ch. 417, and L. 1880, ch. 245. The latter act superseded and included the former.

L. 1880, ch. 245.—“An act repealing certain acts and parts of acts.”

Section 1 specifically repeals certain acts.

Effect of repeal on amendments to the code.—§ 2. The repeal, by the last preceding section of the code of procedure, and of the portions of the revised statutes therein specified, effects also the repeal of all of the existing laws which expressly amend the said code of procedure or the portions of the revised statutes so repealed, by adding to or otherwise altering the text thereof. The description contained in the last preceding sections of statutes, other than the revised laws of eighteen hundred and thirteen, or the revised statutes, refers to the statutes as they appear in the volumes of the laws of each session, printed and published by the state printer until the year eighteen hundred and forty-two, and after that year under the direction of the secretary of state.

Qualifications in relation to the repeal effected by first section.—§ 3. The repeal effected by the first section of this act is subject to the following qualifications:

1. It does not render ineffectual, or otherwise impair any proceeding in an action or a special proceeding had or taken pursuant to law before this act takes effect; and where the repeal of a provision, specified in that section, would render ineffectual, or otherwise impair, such a proceeding, that provision must be deemed to remain unrepealed for the purpose of avoiding such a result.

2. It does not affect any other lawful act done, or right, defense or limitation, lawfully accrued or established, before this act takes effect; and every such right or act remains as valid and effectual as if this act

had not been passed. But this subdivision does not apply to a case provided for in chapter fourth of the code of civil procedure.

3. It does not affect any offense committed, or penalty or forfeiture incurred, before this act takes effect, except that the proceedings in a civil action or special proceeding, brought by reason thereof, are subject to the provisions of the laws in force after this act takes effect.

4. It does not affect the jurisdiction, power or authority of any court or judge, in a criminal action or a criminal special proceeding; nor does it affect any future proceeding, taken according to the existing laws, in such an action or special proceeding, except as otherwise prescribed in subdivision sixth of this section, or implied in chapter twenty-second of the code of civil procedure.

5. It does not affect the power or authority of a court other than the supreme court, a superior city court, the marine court of the city of New York, or a county court, in an action or special proceeding, of which such a court retains jurisdiction under the laws in force, after this act takes effect; nor does it affect any future proceeding taken pursuant to law, in such an action or special proceeding, except as otherwise implied in the code of civil procedure.

6. It does not affect the power, authority or jurisdiction of the county court respecting ferries, fisheries, turnpike roads, wrecks, physicians, habitual drunkards, the removal of occupants from state lands, the laying out of railroads through Indian lands, and upon appeal from the determination of commissioners of highways, and all other powers and jurisdiction specially conferred by any statute remaining unrepealed after this act takes effect upon the late court of common pleas of the county or the county court, and to prescribe the manner of exercising such jurisdiction, where the provisions of any statute are inconsistent with the organization of the county court.

7. It does not affect any provision of the existing laws relating to the district courts of the city of New York, or costs or fees or proceedings in, or appeals from, those courts, or the appointment, tenure of office, duty, or compensation of stenographers in those courts, except so far as the subject thereof is expressly regulated or provided for in the code of civil procedure.

8. It does not affect the right of a prevailing party to recover the fees of referees and witnesses and his other necessary disbursements upon the reference of a claim against a decedent, as provided in those portions of the revised statutes left unrepealed after this act takes effect.

9. Except as otherwise prescribed in section two of this act, the repeal of any provision of the existing laws, which has been amended by a subsequent provision of those laws, not expressly repealed by this act, does not affect the subsequent provision.

10. The repeal of any provision of the existing laws does not revive any law repealed by the latter.

11. The repeal of a law heretofore repealed is not to be construed as a declaration or implication that the repealed law has been in force at any time subsequent to the former repeal.

12. The repeal of a portion of a law is not to be construed as reviving any other portion of that law which has been expressly or impliedly repealed by a law subsequently enacted.

13. Where a provision of the existing laws, incorporated into or adopted or otherwise referred to in any other provision of the existing laws remaining in force after this act takes effect, is repealed, the former provision, nevertheless, remains in force, for the purpose for which it is so referred to, and for no other; except that where it has been revised in, and made a part of, the code of civil procedure, the reference is to be construed as applying to the appropriate provision so revised.

14. The repeal of any of the existing laws creating or otherwise relating to an office or employment where the same or a corresponding office or employment is provided for or recognized in the code of civil procedure, or in any other of the existing laws remaining unrepealed after this act takes effect, does not create a vacancy therein, nor does such repeal, except as otherwise prescribed in subdivision fifty-fifth of section first of this act, abolish, diminish or otherwise affect the salary, fees or other compensation of the incumbent, or the time or manner of the payment thereof, or the fund out of which, or officer by whom they are paid, as regulated by the laws so repealed, or the laws remaining unrepealed; nor does this act affect any provision of the existing laws, which requires, in the city of New York, a party filing a first note of issue of fact in the supreme court or a superior city court to pay any sum to the clerk; or which relates to the accounting for, application and disposition of, the sums so paid.

"Existing laws" defined.—§ 4. The term "existing laws," as used in this act, designates the statutes of the state remaining unrepealed on the day before this act takes effect.

When to take effect.—§ 5. This act shall take effect on the first day of September, eighteen hundred and eighty.

L. 1886, ch. 593.—"An act repealing certain acts and parts of acts."

This act is the repealing act of the Penal and Criminal Codes. Section 1 specifically repealed certain acts enumerated.

Effect of repeal.—§ 2. The repeal by the last preceding section of the portions of the revised statutes therein specified effects also the repeal of all of the laws which expressly amend the portions of the revised statutes so repealed by adding to or otherwise altering the text thereof. The description contained in the last preceding section of statutes, other than the revised statutes, refers to the statutes as they appear in the volumes of the laws of each session printed and published by the state printer until the year eighteen hundred and forty-two, and after that year under the direction of the secretary of state.

Cross-references.

Effect of repeal as to criminal actions.—§ 3. The repeal effected by the first section of this act is subject to the following qualifications:

1. It does not affect any offense committed, or any proceeding taken in a criminal action, before this act takes effect, except that proceedings in criminal actions are subject to the provisions of the laws in force after this act takes effect.

2. It does not deprive any person of any civil remedy given by any of the laws so repealed.

L. 1896, ch. 548.—“An act to repeal certain acts and parts of acts.”

This act was proposed by the statutory revision commission, and is supplemental to the repealing schedules at the end of the general laws.

L. 1896, ch. 548, was repealed by L. 1909, ch. 65, being the act amending the Code of Civil Procedure, proposed by the Board of Statutory Consolidation. There seems to be no reason for its repeal, but of course the repeal did not operate to revive the laws repealed thereby. Moreover many of such laws are again specifically repealed by the various consolidated laws, reported by the board.

REPRIEVES, COMMUTATIONS AND PARDONS.

See Code Crim. Pro. §§ 692–694, 696–698. Prison Law, §§ 260–266.

RESCUES.

Of prisoner by force or fraud; Penal Law, § 1692.

RESISTANCE.

Of execution of process in country declared by governor to be in state of insurrection; Penal Law, § 1850. Of public officer; Penal Law, § 1851.

REVISED STATUTES.

See Preface. Construction; see Statutory Construction. Practically all the sections of the Revised Statutes of 1828 have been repealed and re-enacted in the Consolidated Laws.

REVISION.

See Statutory Revision; Consolidated Laws.

RICHMOND EXPOSITION.

L. 1915, ch. 711.—An act to provide for the representation of the state of New York at the national negro exposition at Richmond, Virginia, and making appropriation therefor.

Omitted as temporary.

RIFLE RANGE.

Trespass upon; Penal Law, § 1425, subd. 14.

RIGHTS, BILL OF.

The provisions of the Revised Statutes known as the Bill of Rights, except as superseded by the Constitution, have been re-enacted in the Civil Rights Law, which see.

RIOTS.

Definition and punishment; Penal Law, §§ 2090–2097. Power of sheriff or other officer to command inhabitants to suppress; Code Crim. Pro. § 102. Liability of city or county for damages; General Municipal Law, § 71.

Cross-references.

RIVERHEAD.

Law library; Education Law, § 1182.

RIVER IMPROVEMENT.

See Conservation Law, §§ 450-472.

ROBBERY.

Definition and punishment; Penal Law, §§ 2120-2129.

ROMAN CATHOLIC CHURCHES.

Incorporation and powers; Religious Corporations Law, §§ 90-92.

ROME CUSTODIAL ASYLUMS.

See State Charities Law, §§ 90-95.

RURAL CEMETERY ASSOCIATIONS.

Incorporation and powers; Membership Corporations Law, §§ 60-86.

RURAL RESIDENCES.

Registration with secretary of state; Agricultural Law, § 318.

SABBATH.

Penal regulations as to sports and labor on; Penal Law, §§ 2140-2152. Barbering prohibited, except in certain places; Penal Law, § 2153.

SAFE DEPOSIT COMPANIES.

Incorporation and powers; Banking Law, §§ 315-331.

SALARIES.

Loans on, regulated; Personal Property Law, § 42; Banking Law, §§ 340-373.

SALES.

Regulated; Law of Commission on Uniformity of Legislation; Personal Property Law, §§ 82-158. Conditional; Personal Property Law, §§ 60-67. Goods in bulk, Id. §§ 44, 45. Misrepresentation, Penal Law, § 435.

SALT SPRINGS LAW.

L. 1909, ch. 54.—"An act relating to salt springs, constituting chapter fifty-two of the consolidated laws."

[In effect February 17, 1909.]

CHAPTER LII OF THE CONSOLIDATED LAWS.**SALT SPRINGS LAW.**

- Article 1. Short title; definition (§§ 1, 2).
 2. Powers of superintendent and regulations for manufacture of salt (§§ 3-40).
 3. Laws repealed; when to take effect (§§ 50, 51).

ARTICLE I.**SHORT TITLE; DEFINITIONS.**

- Section 1. Short title.
 2. Definitions.

§ 1. Short title.—This chapter shall be known as the "Salt Springs Law."

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 1. The Salt Springs Law was originally enacted as L. 1892, ch. 684, and was amended in its entirety by L. 1897, ch. 261 and L. 1898, ch. 27. In the source notes the law is therefore referred to as L. 1898, ch. 27.

References.—Contamination of salt wells, a misdemeanor, Penal Law, § 1758.

§ 2. Definitions.—The term, "Onondaga reservation," when used in this chapter, shall include all the lands situate in the county of Onondaga containing salt springs or used for the manufacture of salt, or owned by the people of the state and adjacent thereto, or connected therewith, or set apart for such purposes by the commissioners of the land office. The term, "manufacturer," when used in this chapter, shall include every corporation, company or individual having the direction, charge or control of the manufactory, whether as owner, proprietor or lessee thereof.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 2; originally revised from L. 1859, ch. 346, §§ 126, 127.

ARTICLE II.**POWERS OF SUPERINTENDENT AND REGULATIONS FOR MANUFACTURE OF SALT.**

- Section 3. Duty on salt.
 4. Onondaga manufacturing districts.

5. Superintendent of Onondaga salt springs; office abolished.
6. Powers of the superintendent.
7. Further powers and duties of superintendent.
8. Rules and regulations.
9. Penalties; rules and penalties to be posted.
10. Habitual neglect to comply with rules.
11. Officers not to be concerned in manufacturing.
12. Deputies and inspectors.
13. Inspection of salt.
14. Inspection of salt; property may be taken for evading inspection.
15. By whom inspection shall be made.
16. Examination of kettles.
17. Damaged salt; penalties.
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19. Bittern pans.
20. Salt in barrels.
21. Quantity of salt in barrels.
22. Name of manufacturer to be branded on package.
23. Boat sunk in canal.
24. Duplicate inspection bills.
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26. Delivery of bills to the inspector.
27. Wells, pumps and lines of aqueducts.
28. Ascertainment of quantity of water.
29. Numerical list of salt blocks to be kept.
30. Distribution of brine.
31. Cisterns; repair of buildings.
32. Unauthorized communications.
33. Discharge of laborers for neglect.
34. Earthworks.
35. Charges against the state; estimates to be made.
36. Sale of lands on the Onondaga salt springs reservation.
37. Title to lands.
38. Moneys arising from sale.
39. Appointments already made not affected.
40. Superintendent to continue in charge. (Repealed.)

§ 3. **Duty on salt.**—A duty of one cent per bushel of fifty-six pounds shall be collected and paid to the treasurer upon all salt manufactured from brine furnished by the state from the salt springs upon the Onondaga salt springs reservation in the county of Onondaga.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 3; originally revised from L. 1859, ch. 346, § 1.

§ 4. **Onondaga manufacturing districts.**—The Onondaga salt springs reservation shall be divided into such manufacturing districts as the superintendent may prescribe; and he may establish therein such public offices for the transaction of the business connected with the manufacture of salt as he may deem convenient. Such offices shall be kept open every day except Sundays and holidays, from sunrise to sunset, and during such hours any person may examine the books of entry kept by the superintendent.

L. 1909, ch. 54.

Regulations for manufacture of salt.

§§ 5, 6.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 4; originally revised from L. 1859, ch. 346, §§ 5, 14.

§ 5. Superintendent of Onondaga salt springs; office abolished.—The office of superintendent of Onondaga salt springs is hereby abolished, and the term of office of the present superintendent shall expire, and his powers, duties and compensation cease and determine, at the time this amendment takes effect. The state comptroller shall hereafter receive and collect all rents and revenues accruing or to accrue to the state under any lease or leases of salt springs property or otherwise and shall report annually to the legislature in the month of January, the amount of such rents and revenues received and his disbursements, if any, incurred in the performance of his duties in relation to said salt springs, during the preceding year, with the items thereof. The state comptroller shall also hereafter have and exercise the powers and duties conferred, in terms, by other sections of this article on the superintendent of the Onondaga salt springs, except that until such time as the legislature shall make further provisions for the direct operation of the salt springs by the state, in the event of the expiration or forfeiture of existing or future leases, no deputies, inspectors or other subordinates shall be appointed or serve under the provisions of section twelve; and the various powers and duties enumerated in this article in respect to the examination, inspection and handling of salt and the inspection of the salt springs, their works and the manufacture of salt, are likewise suspended until the resumption of such direct control by the state and further legislation in relation thereto. (*Amended by L. 1911, ch. 458.*)

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 5; originally revised from L. 1859, ch. 346, §§ 3, 4, 7.

References.—Undertaking of public officers. See Public Officers Law, §§ 11–13.

§ 6. Powers of the superintendent.—Such superintendent shall:

1. Have the possession, government and management of all lands, wood, timber, trees, buildings, erections, pumps and machinery of every kind, and of all water courses, conduits, wells, aqueducts, springs and other property belonging to the state on the Onondaga reservation and the Montezuma salt springs.

2. Superintend and have charge of the salt springs and of the manufacture and inspection of salt and regulate and control the delivery of salt water to salt manufacturers.

3. Daily examine or cause to be examined the cisterns attached to the several manufactories in order to discover any leaks or waste of salt water therefrom or from the logs or conduits leading the water to them and to discover any leak or waste of salt water, either by negligence or design, whether in the cisterns, logs or conduits or in the use of the water in any manufactory, or in letting the same into the cistern or in any other manner; and shall order the owner or other person occupying such manufactory

or his agents or servants who may be present to immediately stop such leak or waste.

4. Cause any person wrongfully possessed of any land or property on the Onondaga reservation or the Montezuma salt springs to remove therefrom, and take possession of the same, and may sue in his name of office for the recovery of damages for any injury to such lands or property according to the nature of such injury.

5. Keep in each of his offices regular books of entry in which all of his accounts and transactions shall be entered.

6. Provide suitable books of entry, blank books, blank inspection bills, returns, forms and other stationery for the use of himself and his deputies for the performance of their official duties.

7. Receive all moneys payable to the state for the duties, rents, fines or penalties specified in this chapter or arising from the salt springs or property of the state connected with the salt manufactory.

8. Deposit each week to the credit of the state treasurer in such bank or banks as may be designated by the comptroller all moneys received by him as superintendent, and transmit every Monday to the comptroller a statement showing the amount of the revenues collected, received and deposited during the preceding week.

9. Forward a statement to the comptroller on the first Monday in each month exhibiting the whole amount of revenue collected during the preceding month and the amount in each week, with a transcript of the receiver's books in each of the manufacturing districts.

10. Prosecute in the name of the state all persons who shall knowingly trespass upon or injure any of the lands or property belonging to the state, who shall wilfully damage any of the machinery, erections, fixtures or other property of the state and for the recovery of all such sums forfeited to the state.

11. Make a report annually to the comptroller on September thirtieth or within ten days thereafter, stating the quantity of salt inspected during the previous year, the amount of revenues accruing thereon and from other sources, the expenditures made by the superintendent, and the amount which, in his judgment, will be necessary for the support of the salt springs for the ensuing year.

12. Make a report annually to the legislature on or before January fifteenth, of his doings during the preceding year, embracing such information in regard to the manufacture of salt and the situation of public works and submitting such recommendations for their further improvement and extension as he shall deem necessary and proper. If the superintendent neglect to make the monthly return required by this section, or to make or transmit the certificate of such deposits to the comptroller, the comptroller shall order the superintendent's bonds to be put in suit for the recovery of any moneys which may be in his hands be-

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Regulations for manufacture of salt.

§§ 7-9.

longing to the state, and such neglect or omission of duty shall be deemed cause for the removal of such superintendent by the governor.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 6; originally revised from L. 1859, ch. 346, §§ 13, 17, 20-22, 24-29, 67.

§ 7. Further powers and duties of superintendent.—The superintendent may:

1. Administer oaths to his deputies, foremen and employees in regard to the return of check rolls and other matters relating to their duties when he shall deem it necessary.

2. Require the officers appointed by him to perform such duties and services in behalf of the state as he may consider appropriate and necessary and remove them or either of them from office.

3. Establish and from time to time alter the boundaries of the inspection districts so as to allow of the inspection of salt at the offices most convenient to the officers in charge and to the owners of the salt works.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 7; originally revised from L. 1859, ch. 346, §§ 8, 30-32, 57, 59, and L. 1866, ch. 814, § 3.

§ 8. Rules and regulations.—The superintendent shall, annually, in the month of April, adopt rules and regulations for the guidance and direction of the salt manufacturers for the ensuing year, and may also, from time to time, establish such rules and regulations, not inconsistent with law, as he may deem expedient respecting:

1. The manufacture and inspection of salt and the collection of duties thereon.

2. The manner and order of receiving salt water from the state reservoirs and aqueducts, the mode of conducting it to the respective manufactories and the erections and securing it from waste and loss.

3. The examination of the several salt works and manufactories by his deputies to determine whether the provisions of the law are properly complied with.

4. The loading of salt in bulk, or otherwise, into boats to be transported upon the canals or the shipment of salt by railway, or otherwise, to be conveyed to market.

5. Such matters as shall tend to the more perfect execution of the provisions of this chapter.

Such rules and regulations shall take effect upon the expiration of one week from the time they are made and published, and shall be enforced until they are revoked or others are established in their stead.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 8; originally revised from L. 1859, ch. 346, §§ 9, 12, 39.

§ 9. Penalties; rules and penalties to be posted.—The superintendent may prescribe specific penalties not exceeding one hundred dollars for each offense for any violation of the rules and regulations established by

him and recover the same in the name of the state with costs, and shall stop all communication between any salt block or manufactory and the state reservoir, if the person in charge of such block or manufactory shall refuse to comply with the provisions of law or the rules and regulations of the superintendent so that no salt water shall come to such block or manufactory until such provisions are complied with. Such rules and regulations and the several penalties prescribed thereby and by law shall be printed and posted conspicuously in the several offices of the superintendent, in all the fine salt manufactories and in the storehouses for coarse salt, and in the mills for grinding salt, and in such other places as shall be deemed expedient for the information of the public.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 9; originally revised from L. 1859, ch. 346, §§ 11, 12, 66, 68.

§ 10. Habitual neglect to comply with rules.—The superintendent shall suspend for such length of time as he may deem proper, not exceeding three months at any one time, the right of any salt manufacturer to carry on his manufactory if such manufacturer shall habitually neglect the rules and regulations prescribed by the superintendent or by law, or shall be in the habit of making bad salt, or if the quantity of salt inspected from his manufactory shall be found materially less than is usually produced from a manufactory of the same capacity of kettles for the time it is actually in operation.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 10; originally revised from L. 1859, ch. 346, § 73.

§ 11. Officers not to be concerned in manufacturing.—No officer or employee connected with the salt springs shall be in any way concerned in the manufacture or sale of salt or have any interest whatever, directly or indirectly, in any salt manufactory or erection for the manufacture of salt, or in the profits of any such manufactory, or in any labor or materials, or contracts for doing any work on the salt reservations which may be done under the provisions of this chapter.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 11; originally revised from L. 1859, ch. 346, § 18.

§ 12. Deputies and inspectors.—The superintendent may by a written order filed in the clerk's office of Onondaga county appoint the following deputies and assistants: One deputy superintendent, who shall be the receiver and chief clerk (and in the case of the death, removal or resignation of the superintendent, possess his powers and discharge his duties until another superintendent shall be appointed); one chief engineer, one chief inspector of salt, each of whom shall receive an annual salary of twelve hundred dollars; three inspectors of salt, each of whom shall receive an annual salary of six hundred dollars; three block inspectors, each of whom shall receive a salary of sixty dollars for not more than eight months in each year; two receivers, each of whom shall receive an annual

salary of eight hundred and forty dollars; one receiver, who shall receive an annual salary of five hundred and forty dollars; one overseer of pumps, who shall receive an annual salary of six hundred dollars; three overseers of pumps, each of whom shall receive the sum of fifty dollars a month for not more than eight months in each year; one superintendent of aqueducts and reservoirs, who shall receive an annual salary of six hundred and sixty dollars; three such superintendents, each of whom shall receive an annual salary of four hundred and eighty dollars; one chief inspector of barrels, who shall receive an annual salary of eight hundred and forty dollars; three assistant barrel inspectors, each of whom shall receive a salary of fifty dollars a month while employed; two assistant barrel inspectors, each of whom shall receive fifty dollars a month for such time as their services are necessary; and such additional assistants, pumpers, inspectors, weighers and overseers as may be necessary during the business part of the season, each of whom shall receive not more than fifty dollars a month for not more than eight months a year. Before entering upon the duties of his office, each person appointed by the superintendent shall execute and deliver to him an official undertaking in amounts with sufficient sureties for the faithful performance of his duties and for the faithful and punctual payment to such superintendent of all moneys which such person shall from time to time receive, and as often and at such stated periods as may be required of him. A list of the names of all officers appointed by the superintendent shall be kept conspicuously posted in each of the receivers' offices in the several districts.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 12; originally revised from L. 1859, ch. 346, §§ 6, 7, 15. Sections 6 and 7 were amended by L. 1866, ch. 814.

§ 13. **Inspection of salt.**—The superintendent and his deputies charged with the inspection of salt shall carefully and constantly superintend its manufacture in the several fine and coarse salt manufactories, and examine and inspect such salt in the various stages of its production in the kettles, vats, bins and storehouses; and require inferior or impure salt to be separated from salt suitable for passing inspection, and to be either destroyed or returned to the cisterns to be dissolved or deposited in some proper place and disposed of as salt of second quality. No salt shall pass as good unless it is manufactured as directed by this chapter and by the rules and regulations of the superintendent, and is well made, free from dirt, filth, stones, admixtures of lime, ashes of wood and other substances injurious thereto, fully drained from pickle, and bitters properly extracted therefrom. The superintendent shall allow salt made from the brine of the springs to be manufactured without extracting the bitters or impurities therefrom, provided all such salt, whether shipped loose or in bags, barrels or packages, shall be designated and branded as impure and agricultural salt. Salt shall not be packed in casks, barrels, sacks or other vessels, or taken from the salt house in bulk or otherwise, until it has remained in the bin or store-

house at least fourteen days, and the inspectors shall have determined upon an actual examination that it is sufficiently drained of pickle and fit for inspection. No inspection shall be made after sundown or before sunrise, and no salt manufacturer shall retail or deliver any uninspected salt after sundown or before sunrise. No person shall remove or attempt to remove from the reservation or from any salt manufactory, storehouse or other place of deposit, any salt before it shall have been inspected, and the duties paid thereon, with intent to evade the inspection thereof or the payment of the duties thereon. Every person so removing or attempting to remove any salt shall forfeit to the state such salt, with the bag, barrel or other vessel in which it shall be contained, and five dollars for every bushel so removed or attempted to be removed; and the boat, vessel, cart, wagon, sled or other vehicle, in or by which the same shall be removed or attempted to be removed, with the apparel, tackle and team belonging thereto, shall be taken to be the property of such person and be liable to the payment of such penalty.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 13; originally revised from L. 1859, ch. 346, §§ 76, 79, 94-97, 99, 104, 105; § 99 was amended by L. 1860, ch. 270; L. 1880, ch. 139, §§ 1-3.

§ 14. Inspection of salt; property may be taken for evading inspection.—The superintendent or any of his deputies may enter every barn, storehouse, inclosure or other place of deposit which he may suspect to contain salt so removed or attempted to be removed, and every boat, vessel, cart, wagon, sled or other vehicle in or by which such salt shall have been removed or attempted to be removed, and seize such salt, with the bag, barrel or other vessel containing it, and sell the same at public auction for the use of the people of the state, after giving six days' notice of the time and place of sale. The officer or person making such seizure may also seize such boat, vessel, cart, wagon, sled or other vehicle, with the tackle, apparel and the team belonging thereto and retain the same until the determination of any suit which may be brought for the penalty so imposed. The owner of the property so seized may obtain possession thereof by giving a bond to the superintendent, with sureties to be approved by him, for the return of such property to the officer, if judgment for the plaintiff shall be recovered in the suit brought for the forfeiture incurred, and to secure which such seizure shall have been made.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 14; originally revised from L. 1859, ch. 346, §§ 106-108, 110.

§ 15. By whom inspection shall be made.—Persons desiring to have salt inspected shall apply to the inspector in the district where such salt shall be, who shall thereupon actually examine it in the bag, barrel or vessel in which it is contained. In order to facilitate its examination, the person offering it shall unhead or bore the barrel or open the bag or other vessel containing it as directed by the inspector, so as to expose the salt to his

touch, view and examination, and shall in all cases provide the necessary assistance to lift the salt while the inspector weighs or measures it.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 15; originally revised from L. 1859, ch. 346, §§ 77, 78, 80.

§ 16. Examination of kettles.—The inspectors shall daily examine in their respective districts all kettles used in the manufacture of fine salt, and shall require their removal if damaged or defective so as to be unsuitable for the manufacture of good salt, and if not removed upon his order the superintendent may withhold brine from such manufacturer until such order shall be complied with.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 16; originally revised from L. 1859, ch. 346, § 48.

§ 17. Damaged salt; penalties.—The superintendent shall erase his inspection brand from packages containing salt which, after it has been inspected and the duties paid, shall have suffered any damage so as to reduce its weight or impair its quality, and require that it shall be repacked, if reduced in weight only, or destroyed, if impaired in quality, by returning it to the cisterns from which the owner or manufacturer thereof shall draw his supplies of brine for his works. Salt of any inferior quality, dirty, damaged or condemned, may be sold loose or in bulk at the works by the manufacturer thereof, the inspector designating quantity by weight in the inspection bill as in ordinary cases, and distinguishing the same as “second quality,” and the person having it inspected paying the duty thereon. Such inferior salt shall not be mixed with other salt which is to be ground or prepared as table salt, or for the packing of provisions, nor shall it be packed in a manner calculated to deceive an innocent purchaser as to its real quality, and if packed in barrels in the ordinary manner it shall be branded in plain letters, “second quality.” Every person violating the provisions of this section relating to mixing such salt with other salt or the preparing of it for table use or for packing purposes shall, for every such violation, forfeit to the people of the state the sum of one hundred dollars. The inspector or deputy who shall have inspected and branded any Onondaga salt put up in barrels or sacks which on being opened are found to contain salt of a quality inferior to that required by law, and the maker and manufacturer whose name is branded on any such barrel or painted on any such sack, shall forfeit to the purchaser injured thereby the sum of one dollar for each bushel so found inferior.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 17; originally revised from L. 1859, ch. 346, §§ 92, 118, 121, 124.

§ 18. Deleterious ingredients prohibited.—No salt manufacturer or other person shall put any article or ingredient into the salt water in his cisterns or while evaporating other than such as shall be allowed and approved of by the superintendent in the general rules and regulations which he

shall adopt in relation thereto. Every person violating any provision of this section shall for every such offense forfeit to the state the sum of fifty dollars.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 18; originally revised from L. 1859, ch. 346, § 63.

§ 19. **Bittern pans.**—Every manufacturer shall keep one good bittern pan for each kettle or pan used in the manufacture of salt for the purpose of removing the feculent matter and other foreign substances held in solution in the brine during the process of making salt. The superintendent shall, in the rules and regulations adopted by him, regulate the manner of using such pans and of removing the impurities contained in the salt water during the process of manufacturing the same into salt, and the manner of cleansing the kettles and pans.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 19; originally revised from L. 1859, ch. 346, §§ 64, 65.

§ 20. **Salt in barrels.**—The superintendent shall cause all salt barrels to be inspected before salt is packed therein, under such rules and regulations as shall from time to time be adopted and published by him, and all salt shall be rejected when offered for inspection in barrels not inspected or in inspected barrels not properly secured after the salt is packed therein so as to preserve it from waste or injury, and all barrels so used shall be such as are approved by the superintendent. Salt in barrels shall not be marked unless the barrels are thoroughly seasoned, stout and well made, with a sufficient number of good, strong hoops, to be well nailed and secured, not burned or colored on the inside or dirty on the outside, nor without having the holes made for inspection or the knot holes, if any, well and securely plugged up. If the salt upon examination shall prove not to be thoroughly drained, or if, when the barrels are standing on end, water shall exude therefrom, such barrels shall not be branded by the inspector, but the salt therein shall forthwith be emptied back into the bins, where it shall remain for a further period of fourteen days before it shall be lawful again to pack the same.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 20; originally revised from L. 1859, ch. 346, §§ 88-90.

§ 21. **Quantity of salt in barrels.**—The superintendent shall from time to time specify the quantity of salt that barrels or other packages offered for inspection shall contain, and shall prohibit the inspector's brand from being placed upon any package that does not correspond with such regulation. He shall require that all ground salt manufactured at the Onondaga springs and put up for the market in barrels, kegs, boxes, sacks or bags, shall be legibly marked in letters at least half an inch in length, on each barrel, keg, box, sack or bag, with the word "solar" or "boiled," as the fact may be.

L. 1909, ch. 54.

Regulations for manufacture of salt.

§§ 22-24.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 21; originally revised from L. 1859, ch. 346, §§ 116, 117.

§ 22. **Name of manufacturer to be branded on package.**—Every manufacturer shall brand or mark with durable paint every barrel or other package of salt manufactured by him with the name of the district in which his block of kettles is located, the surname at full length of the proprietor or owner of the manufactory at which the salt shall have been made, and the initial letter of his Christian name. If the salt shall have been manufactured for a company or association of individuals, he shall mark or brand in like manner upon every such barrel or other package, the name of the firm by which the company is called; and no inspector shall inspect or pass any barrel or other package of salt which shall not be so marked or branded, nor shall the superintendent affix his brand to any such barrel or other package.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 22; originally revised from L. 1859, ch. 346, §§ 100, 101.

§ 23. **Boat sunk in canal.**—The owner or agent of any boat laden in whole or in part with salt which shall be sunk or partly immersed in the canals or navigable waters of this state or filled with water so as to damage any part of the cargo of salt on board, shall not sell or otherwise dispose of the salt in the original package. Such salt shall be emptied from the barrels or sacks containing it and sold or disposed of after having been exposed to public inspection so that its quality and condition shall be known. Salt so injured shall not be again packed in barrels bearing the inspector's brand nor shipped or transported beyond the bounds of the state. Every person violating the provisions of this section shall forfeit the sum of two hundred and fifty dollars for every violation.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 23; originally revised from L. 1859, ch. 346, §§ 123, 124.

§ 24. **Duplicate inspection bills.**—The superintendent shall, after the inspector has ascertained the quality of salt in any parcel offered for inspection, and is satisfied that it is of such quality that it ought to pass inspection, deliver duplicate inspection bills thereof, dated and signed by him, to the person applying for the inspection. Such bills shall contain the name of the manufacturer and the person at whose instance the inspection is had, the number of bushels and pounds of salt contained in the parcel and the number of bags, barrels or other vessels in which it shall be contained, with a certificate of the inspector stating that he has inspected the salt specified in such bill. The person applying for inspection shall thereupon deliver such duplicate inspection bills to the receiver or person in charge of his office in the district where the salt is inspected and pay the duties on the salt mentioned therein.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 24; originally revised from L. 1859, ch. 346, §§ 81-83.

§ 25. Receiver's duties.—The receiver shall:

1. Mark such inspection bills with the numbers in the order in which they are presented, placing the same number on each duplicate bill of the same parcel, and commencing anew with the commencement of every month.

2. Enter upon his books an account of the parcels of salt in which he shall state the number of the parcel, the name of the manufacturer and of the person at whose instance the salt shall have been inspected, the number of bushels and pounds of salt in the parcel, the number of bags, barrels or other vessels in which it is contained, the amount of duties thereon and when the same are paid.

3. Sign a receipt at the foot of each duplicate inspection bill and deliver the same to the person paying the duties.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 25; originally revised from L. 1859, ch. 346, § 84.

§ 26. Delivery of bills to the inspector.—The person receiving the bills shall forthwith deliver one to the inspector by whom the salt was inspected, to be entered in a book kept by him, and retain the other as evidence of payment of the duties thereon. Such inspector shall thereupon brand or mark with durable paint the barrel or cask containing the salt so inspected with his surname at length and the first letter of his Christian name, with the addition of the word "inspector" in letters of at least one inch in length; and shall mark upon the head of the barrel or cask with durable paint, the number of pounds of salt contained therein. Barrels, sacks or other packages in which salt shall have been packed and inspected, shall not be again used for the packing of salt therein until the marks or brands made by the superintendent shall be first effaced. The inspection shall not be deemed complete nor the payment of the duties consummated until one of the inspection bills so receipted shall have been returned to the superintendent, and the salt, in cask headed up, shall have been so marked or branded. Every person violating the provisions of this section relating to the packing of salt in barrels, sacks or other packages, before the marks or brands made by the superintendent shall have been effaced, shall forfeit to the state for every bushel of salt so packed the sum of five dollars.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 26; originally revised from L. 1859, ch. 346, §§ 85-87, 98.

§ 27. Wells, pumps and lines of aqueducts.—The superintendent shall keep wells, pumps, reservoirs, aqueducts and machinery in necessary repair; but no repair involving any aggregate expenditure of more than five hundred dollars shall be made or undertaken without the approval of the comptroller, to be indorsed upon detailed statements. Said superintendent may enter upon the lands of any corporation, individual or company or upon any leased lands, and carry salt and brine across the same in the

same manner as hitherto, and by suitable and proper aqueducts and conduits, and shall maintain, repair and keep in proper condition for transmitting brine, the aqueducts and conduits heretofore laid by the state, its officers and agents, and may replace the same wherever situated by other aqueducts or conduits for transmitting brine, and shall provide and place such new machinery and fixtures as may be necessary to pump and distribute such brine, paying to the owner or lessee of such lands the damages sustained by him, if he be legally entitled thereto, to be ascertained by mutual agreement, or by the appraisalment of three commissioners appointed as prescribed in the condemnation law.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 27, as amended by L. 1900, ch. 385; originally revised from L. 1859, ch. 346, §§ 10, 38.

Reference.—Contamination of salt wells, a misdemeanor, Penal Law, § 1758.

§ 28. **Ascertainment of quantity of water.**—The superintendent shall cause the quantity of water required for the efficient working of the pumps or other machinery for raising salt water from the wells and reservoirs now or hereafter to be constructed in any district, to be ascertained by competent engineers, and shall certify the same to the superintendent of public works, who on receiving such certificate shall cause such quantity of water to be at all times supplied to the Syracuse level of the canal, in addition to that usually required or supplied for the purpose of navigation, except when it shall be necessary to withdraw the water from such level for repairs. The certificate shall be filed in the office of the superintendent of public works, and the amount of water thus ascertained to be necessary may be drawn from the canal for such purposes by the superintendent of the Onondaga salt springs, provided the navigation of the canal be not thereby impeded. All bulkheads, gates and other appurtenances required for taking and regulating the flow of such water shall be constructed and maintained by the superintendent of the Onondaga salt springs; and any property taken by virtue of this section shall be paid for by agreement or appraisalment in the manner prescribed in the condemnation law.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 28; originally revised from L. 1859, ch. 346, § 33, as amended by L. 1872, ch. 599.

§ 29. **Numerical list of salt blocks to be kept.**—The superintendent shall keep on file in each of the receivers' offices a numerical list of all the fine salt blocks containing the name of the owner or occupant of each, the several manufactories entitled to the first use of the water, and the date of any additional erections entitled to the surplus water, in the order of their erection. A similar list shall also be kept of the coarse salt erections entitled to the first use of the water, including the number of covers or rooms; and of all subsequent erections entitled to supplies from the surplus.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 29; originally revised from L. 1859, ch. 346, § 34.

§ 30. **Distribution of brine.**—No distinction in the furnishing and dis-

tribution of brine to the fine and coarse salt erections from the Onondaga salt springs or wells shall be made between the works situated on the state lands and those built on private lands. If there be an insufficiency of brine to supply all such erections, the superintendent shall so classify them as to furnish a full supply of water to each in an equal portion of the time while such deficiency exists. The superintendent shall, during the months of July and August, so classify the erections for the manufacture of solar salt, but such classifications shall not give such erections a supply for more than an equal portion of the time. The superintendent shall not furnish brine to any erection for the manufacture of fine or coarse salt erected after April fifteenth, eighteen hundred and fifty-nine, either upon vacant lands or by doubling the blocks on lots then used and occupied for manufacturing purposes, until the quantity of brine raised and distributed by the state shall be sufficient for fully supplying all the works through the manufacturing season, without classifying the same for any part of the time.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 30; originally revised from L. 1859, ch. 346, §§ 41, 47, 61. Section 41-w was amended by L. 1860, ch. 270.

§ 31. **Cisterns; repair of buildings.**—Every salt manufacturer who shall provide an earth reservoir for the storage of salt water may have such reservoir filled by the superintendent from any surplus not required for immediate distribution, and shall be allowed to use the same in addition to the ordinary supply to which such manufacturer may be entitled according to the provisions of this chapter. Every manufacturer of fine salt shall have two cisterns or reservoirs attached to and adjoining his manufactory. Such cisterns or reservoirs shall be well made, and as free from leaks as may be, and shall each be of sufficient capacity to contain as much salt water as can be boiled or evaporated in such manufactory from the kettles or pans set therein, in two days. No manufacturer of fine salt who shall neglect to provide such reservoirs or cisterns or to keep the same in good repair so as to save the water from undue or unnecessary waste shall be entitled or permitted to receive any salt water from the state reservoirs. Every manufacturer shall keep his buildings, cisterns and appurtenances for the manufacture of salt in thorough repair, so that the salt manufactured by him shall not suffer damage or be impaired in quality after the same shall have been deposited in the bins or storehouses. If any such manufacturer shall neglect or refuse, upon the requisition of the superintendent to place his works in such a state of repair or to put them in a proper condition for the manufacture and preservation of good salt, he shall forfeit his right to the use of the salt water, and the superintendent may disconnect the communications between the state aqueducts and his cisterns until such manufacturer shall comply with the requisitions of the superintendent.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 31; originally revised from L. 1859, ch. 346, §§ 58, 68, 71, 72, 75.

§ 32. **Unauthorized communications.**—No manufacturer or other person shall open or aid, assist, counsel or advise in opening the communication between any manufactory or salt work and the logs or conduits leading to or connecting with the state reservoirs without the consent of the superintendent or one of his deputies. Every person violating the provisions of this section shall forfeit to the state the sum of one hundred dollars for every such violation. The owners of any salt works surreptitiously receiving a supply of salt water by such means shall forfeit and pay to the state a like sum on demand of the superintendent; and in default of payment shall be deprived of his supply of water until such demand shall be complied with.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 32; originally revised from L. 1859, ch. 346, §§ 69, 70.

§ 33. **Discharge of laborers for neglect.**—The superintendent shall require the discharge of every boiler, packer or other laborer employed by any manufacturer who shall neglect or refuse to obey his or his deputies' directions in and about any salt works or manufactory respecting the manufacture, packing or care of salt produced by such manufacturer, and to be offered for inspection; and each person so discharged shall not be again employed by any person in the manufacture of salt without the consent of the superintendent.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 33; originally revised from L. 1859, ch. 346, § 74.

§ 34. **Earthworks.**—The superintendent may, whenever the construction of any earthwork requiring the services of an engineer shall be undertaken by him, apply to the state engineer for the services of an engineer, who may, by a written order, if in his judgment the interests of the state will be promoted thereby, direct the resident engineer of either the Oswego or Erie canal to assume the charge of such work under the direction of the superintendent of the Onondaga salt springs, and to make surveys, maps, profiles, estimates and measurements thereof.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 34; originally revised from L. 1859, ch. 346, § 46.

§ 35. **Charges against the state; estimates to be made.**—All charges against the state or liabilities incurred for the support and maintenance of the Onondaga salt springs shall be audited and paid by the superintendent from the moneys advanced to him from time to time by the treasurer, upon the warrant of the comptroller. Before drawing any money from the treasury to be expended by him, the superintendent shall make out in minute detail an estimate of the necessary expenses to be incurred so far as they can reasonably be foreseen for a period of two months, commencing with the month of January, and forward the same to the comptroller, who shall thereupon authorize the superintendent to make his draft upon the treasurer for the amount of such estimate or such portion thereof as he

shall think necessary and proper. To meet any extraordinary expenditure, the superintendent may, in like manner, make special estimates, upon which the comptroller shall advance in like manner if the same be approved by him, but the superintendent shall not receive from the treasury a larger sum than the amount of the appropriation made by the legislature for the support of the salt springs. At the expiration of each period of two months the superintendent shall make a full and perfect abstract of the vouchers in his possession to which his affidavit shall be attached, to the effect that he has deposited in the bank designated by the comptroller all the moneys received by him for duties on salt, rents, fines or penalties, or for other property of the state; that such abstract is a true abstract of all the vouchers taken by him as superintendent for such two months; that the moneys specified in the receipts referred to in the abstract have been actually paid as specified in such receipt; and that all the receipts were filled up as they then appear, and were read or the amount distinctly stated, to the signer of each, when signed, according to his best knowledge and belief. The report and vouchers shall be returned to the comptroller, and if satisfactory to him, he shall enter his approval on the abstract and audit and allow the accounts of the superintendent. The superintendent shall make out a report showing the expenditures for the two preceding months, corresponding in its detail of items to the estimate presented, before an advance is authorized to be made by the comptroller. If any such vouchers are objectionable, the comptroller shall enter his disapproval on the particular voucher and not audit and allow the same until satisfied of its legality and propriety.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 35; originally revised from L. 1859, ch. 346, §§ 35–37.

§ 36. **Sale of lands on the Onondaga salt springs reservation.**—The commissioners of the land office shall cause to be appraised and sell and convey in fee any of the lands of the Onondaga salt springs reservation upon the request of any of the lessees of said lands, or their legal representatives, upon their releasing absolutely all right to have, demand or receive from the state any money by way of damages either on account of the termination of the leases by which such land are held or on account of the destruction or removal of any salt blocks, their appurtenances or any other property or buildings therefrom. Such lessees or their legal representatives, after the appraisal of the value of such lands is returned to and approved by the commissioners of the land office, may for thirty days after the date of such approval become the purchasers of such lands at the appraised value thereof, but if the lessee or his legal representative does not purchase such lands at such appraisal within said thirty days, the title thereof shall vest and be in the people of the state released and discharged from the terms and conditions of any leases, and such lands shall be advertised and sold under the direction and control of the commissioners of the

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land office to the highest bidder in accordance with the provisions of the public lands law, but the lessee or his legal representatives, may, for thirty days after such sale, remove therefrom the buildings and other property placed thereon by him. In case of failure to so remove such buildings or other property within said time, the same shall be considered as given up and abandoned and shall become and be the property of the person or persons so purchasing said land.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 36; originally revised from L. 1874, ch. 200.

§ 37. **Title to lands.**—The title of all lands of the Onondaga salt springs reservation which are now adjacent to, or which surround, or upon which are located the engines, pumps or wells belonging to the people of the state of New York, which shall not have been sold or disposed of in accordance with the foregoing provisions of this chapter on or before the first day of March, eighteen hundred and ninety-eight, and the title of all other lands of the Onondaga salt springs reservation which shall not have been sold or disposed of in accordance with the foregoing provisions of this chapter on or before the first day of January, eighteen hundred and ninety-nine, shall vest and be in the people of the state, released and discharged from the terms and conditions of any leases, and the buildings, structures and property thereon shall be deemed abandoned and shall become and be the property of the people of the state of New York.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 37; section was new in former Salt Springs Law.

§ 38. **Moneys arising from sale.**—All moneys arising from the sale of the Onondaga salt springs reservation or any part thereof, by virtue of the foregoing provisions of this chapter, shall be placed by the comptroller in the state treasury. The state shall cease to furnish brine at any expense to said state on or before the first day of January, eighteen hundred and ninety-nine, and shall cease to operate its works at any expense to the state upon the Onondaga salt springs reservation on or before the first day of January, eighteen hundred and ninety-nine, and the commissioners of the land office are authorized and directed to sell all of the right, title and interest of the state, or the people thereof, at public or private sale, in or to any or all of the personal property upon said Onondaga salt springs reservation or connected therewith. The lessees of any such personal property, if any there be, shall have the first opportunity of purchasing the same, but all such personal property which shall not have been disposed of on or before the first day of January, eighteen hundred and ninety-nine, shall vest absolutely in the people of the state of New York free from all claims in behalf of any lessee or his legal representatives.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 37; originally revised from L. 1874, ch. 200.

§ 39. **Appointments already made not affected.**—This chapter shall not

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Laws repealed.

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affect any appointment or term of office heretofore made by the present superintendent of the Onondaga salt springs reservation.

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 39. This section was new in the former Salt Springs Law.

§ 40. Superintendent to continue in charge.—*Repealed by L. 1911, ch. 458.*

Source.—Former Salt Springs L. (L. 1898, ch. 27) § 40. This section was new in the former Salt Springs Law.

ARTICLE III.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 50. Laws repealed.

51. When to take effect.

§ 50. Laws repealed.—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 51. When to take effect.—This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes Part 1, chapter 9, title 10, section All

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1797	90	All	1831	174	All
1798	60	All	1832	243	All
1799	58	All	1833	264	All
1800	77	All	1834	10	All
1800	123	All	1834	201	All
1801	177	All	1837	115	All
1803	90	All	1837	233	All
1807	102	1-5	1837	277	All
1808	142	All	1838	291	2, 3, 6-8
1810	161	All	1839	227	All
1811	13	All	1839	341	3
1811	76	All	1841	183	7-9, 13-20
1812	164	All	1842	302	All
1813	203	41	1843	184	All
1816	173	All	1843	229	All
1816	236	46	1845	19	All
1817	262	6	1846	71	All
1820	124	2,	1846	188	All
part relating to	salary of superinten-		1847	154	All
dent			1847	340	All
1820	223	All	1848	187	All
1821	231	All	1848	346	All
1822	177	All	1850	374	All
1822	194	All	1851	281	All
1823	235	All	1851	283	All
1825	5	All	1854	136	All
1825	326	All	1854	334	All
1828	20	15,	1854	391	All
¶ 7 (2d Meet.)			1856	95	3, 4, 8, 9
1828	21	1,	1857	578	All
¶ 458 (2d Meet.)			1857	601	All
1828	318	All	1858	177	All
1829	278	1-4, 6, 7	1859	346	All

L. 1909, ch. 54.

Consolidators' notes.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1860	270	All	1880	139	All
1861	289	All	1880	574	All
1866	204	All	1883	251	All
1866	814	All	1884	51	All
*1867	261	All	1892	684	All
1870	279	All	†1897	261	All
1872	599	All	1898	27	All
1877	198	All	1900	385	All
1878	374	All			

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

Wherever a statute has been specifically repealed, that and the repealing statute are given without explanatory note.

R. 2, pt. 1, ch. 9, tit. 10, § 71.—L. 1843, ch. 184, § 7; L. 1846, ch. 188, §§ 4, 5; L. 1850, ch. 374, §§ 5, 6, 9; L. 1854, ch. 391, § 2; L. 1857, ch. 601, §§ 1, 3; L. 1859, ch. 346, § 7; L. 1898, ch. 27, § 27, have been amended so as to read as follows and are superseded and repealed by the amending statute.

L. 1811, ch. 13.—Provided for the appointment of William Kirkpatrick as superintendent of the Onondaga Salt Springs. Obsolete.

L. 1812, ch. 164, §§ 1-34.—Section 1 provides for appointment of superintendent by legislature, superseded by L. 1825, ch. 326, § 3, which provides for the appointment of a superintendent of the Onondaga Salt Springs by the governor with the consent of the senate.

Section 2, pt., provides for a bond to be given by superintendent, superseded by L. 1825, ch. 326, §§ 1, 3, which contain provisions for oath of office, and bond conditioned for the faithful performance of duties of superintendent of Salt Springs.

Section 2, pt., providing for a report to the legislature, was abrogated by L. 1817, ch. 262, § 6, which provides for a quarterly report to the commissioners of the canal fund instead of to the legislature.

Section 3, pt., relative to inspection of salt, was abrogated by L. 1821, ch. 231, § 1, which provides for the inspection of salt by the superintendent or deputies of the Salt Springs.

Section 3, pt., relative to deputy superintendents, was superseded by L. 1825, ch. 326, § 2, which provides for deputy superintendent in the villages of Liverpool, Salina, and Geddes, and by § 1, which provides for the giving of bond by deputies and taking oath of office, and by § 13, which provides for inspection of salt at manufacturer's plants.

Section 5, fixing duty on salt at three cents per bushel, superseded by L. 1817, ch. 262, § 6, which provides for a duty of twelve and one-half cents per bushel on salt in place of all other duties. (L. 1817, ch. 262, is the first canal law and charged duty.)

Section 6 permits persons occupying or leasing land on the Salt Springs reservation, in the lease of which rent is reserved on lot of land or on capacity of kettles or pans, to pay duty of five cents per quarter on each gallon capacity of kettles, during continuance of said lease, instead of duty of three cents per bushel on salt manufactured, and other cognate subjects. Temporary and obsolete.

Section 7, prohibiting transportation by water of salt not in barrels, was superseded by L. 1821, ch. 231, § 5, which provides that salt may be transported in bulk on the Erie canal.

Section 9, requiring obliteration of brands on packages used for repacking, was re-enacted by L. 1825, ch. 226, § 48.

Section 10, imposing penalty for counterfeiting superintendent's marks, was repealed by construction by L. 1821, ch. 231, § 8, which imposed a different penalty for the offense and by L. 1823, ch. 235, § 4, which re-enacted the provisions of the statute affected.

Section 11, relating to underletting without consent of superintendent, was covered by L. 1838, ch. 291, § 3, which is a substantial re-enactment of the statute affected so far as same affects the town of Salina. L. 1859, ch. 346, § 22, covers the provisions of statute affected.

Section 12 provides for use of surplus water by lessees of adjoining lots. Superseded by L. 1825, ch. 326, § 10.

* Stricken from schedule and expressly re-enacted by L. 1909, ch. 240, § 89, in effect Apr. 22, 1909, as though never included in said schedule.

† Inserted and expressly repealed by L. 1909, ch. 240, § 102, in effect Apr. 22, 1909.

Section 14, relating to removal of feculent matters from salt, was superseded by L. 1825, ch. 326, § 19.

Section 15, relating to the use of salt water, was superseded by L. 1825, ch. 326, § 10, which provides that the engineer of the pump works of Salina shall have charge of the salt water and of the delivery thereof.

Section 16, relating to cutting of wood on reservation, superseded by L. 1825, ch. 326, § 7, which provides that the superintendent of the Salt Springs shall be deemed in possession of all the land, wood, timbers, trees and may maintain actions for trespass and for injury to any of the property of the state.

Section 17, pt., not contained in the proviso relating to cutting of and carrying away wood, superseded by L. 1825, ch. 326, § 52, which provides that removing trees, wood, timber or poles from the Salt Springs reservation shall constitute trespass and provides a penalty therefor.

Sections 18, 19, relating to entering upon lands by superintendent, superseded by L. 1825, ch. 326, § 7, which provides that the superintendent of the Salt Springs reservation shall be considered in possession of all the lands, etc., within the reservation and may bring action to recover possession thereof when same is wrongfully withheld.

Section 20 authorized the superintendent of the Salt Springs to lay out a road in the village of Geddes. Temporary and obsolete.

Section 21 extended the time of payment of the purchase price of lots in the villages of Geddes and Liverpool. Temporary and obsolete.

Section 22 authorized the leasing of certain lots on the Salt Springs reservation by leases to terminate in 1828. Expired by limitation. Obsolete.

Sections 23, 24 authorized the laying out of a burying ground and village lots in the villages of Liverpool, Geddes and Salina on the Salt Springs reservation. Temporary and obsolete.

Section 26 authorized the superintendent of the Salt Springs to lay out two acres of land on the Salt Springs reservation, on which to make solar salt, and to lease said lot for seven years, and allow use thereon of surplus salt waters. Temporary and obsolete.

Section 27, requiring superintendent to take oath, was superseded by L. 1825, ch. 326, §§ 3, 4, which provided that the superintendent of the Salt Springs shall give a bond to faithfully perform his duties, and for failure to take oath of office provided for in L. 1825, ch. 23, § 1, for the space of thirty days after the receipt of notice of appointment, he shall be deemed to have refused to accept said office.

Section 28, requiring transfers of leased land to be recorded in office of clerk of town of Salina, superseded by L. 1859, ch. 346, § 45, which provides that leases of land on Salt Springs reservation shall be recorded in Onondaga county clerk's office.

Section 29, prohibiting superintendent from being interested in salt manufacture, was superseded by L. 1825, ch. 326, § 1, which provides that superintendent of Salt Springs shall not be interested in manufacture of salt.

Section 30 directs actions for forfeitures to be in official name of the superintendent. Amended by L. 1816, ch. 173, §§ 1 and 2, which provide that the forfeitures which by L. 1812, ch. 164, § 30, are directed to be sued for and recovered by the superintendent in his official name, may be sued for in the name of the people, and that processes in such actions may be served on Sunday.

Section 31, exempting superintendents and deputies from jury and military duty, superseded by L. 1825, ch. 326, § 49, which exempts superintendent and deputies from jury and military duty.

Section 32 authorized the superintendent of Salt Springs to cause repairs to be made to the public buildings on the Salt Springs reservation. Temporary and obsolete.

Section 33, pt., relating to pay of superintendent, was superseded by L. 1816, ch. 236, § 46, which increases the salary of the superintendent of the Salt Springs by the addition of \$250 annually.

Section 34 is a repealing section.

L. 1816, ch. 173.—Section 1, relating to actions for forfeitures, was superseded by L. 1821, ch. 231, § 10, which provides that action for forfeiture may thereafter be brought either in the name of the people or in the official name of the superintendent.

Section 2, providing for service of process on Sunday, superseded by L. 1821, ch. 231, § 11, which re-enacts L. 1816, ch. 173, § 2, with additional matter. Sections 2, 3 are repealing sections.

As the statutes covered by express repealing acts have been repealed by the

L. 1909, ch. 54.

Consolidators' notes.

Consolidated Laws, the repealing statutes, have been recommended for repeal. L. 1890, ch. 124, § 2, pt.—Abolished salary of superintendent of Salt Springs, and by L. 1820, ch. 249, § 19, the salary was fixed at \$300.

L. 1820, ch. 223.—Penalizes: (1) the receipt of duties on salt by unauthorized persons, also (2) the removal of salt before inspection. The provision relating to removal of salt before inspection was superseded by L. 1823, ch. 235, § 15. The provision relating to the receipt of duties on salt by unauthorized persons appears to have been abrogated by L. 1825, ch. 324. The "Notes" of the revisers of the Revised Statutes show that it was abrogated: "When an act or section or part of a section, is stated to be *omitted*, it is intended to be repealed."

"When an act or provision has been expressly negated, or is wholly inconsistent with some principal adopted, it is designated as *abrogated*."

L. 1821, ch. 231, §§ 1-17, 18, pt., 19, 27.—Section 1, which relates to inspection of salt was abrogated by L. 1825, ch. 326, § 13, which requires the inspection of salt. L. 1821, ch. 231, was regarded by the revisers of the Revised Statutes as having been abrogated by L. 1825, ch. 326, except §§ 18 and 19; § 18 being repealed by L. 1828, ch. 21, § 1, par. 549 (2 meet.) being repugnant to R. S., pt. 1, ch. 9, tit. 10, and § 19 being revised in R. S., pt. 1, ch. 9, tit. 10, § 90, and therefore coming under repeal of L. 1828, ch. 21, § 1, ¶ 549 (2 meet.).

See "List of Acts Omitted in the Revision of the Statutes and Table of Reference of Provisions Revised," prepared by the revisers, 1828.

Section 3, relating to the adulteration of salt during the manufacture, abrogated by L. 1825, ch. 326, § 19, which covers the same matter.

Section 4, relating to removal of feculent matter, and also to regulations which cover the manufacture of salt, superseded by L. 1825, ch. 326, § 19.

Section 5, relating to transportation of salt from the reservation by water and regulations governing same, superseded by L. 1825, ch. 326, § 26.

Section 6, defining the term "reservation," was abrogated by L. 1825, ch. 326, § 7, which covers the same matter.

Section 7, which provides for the appointment of special deputy superintendents, and that salt found in the western district of New York, not properly marked or branded, shall be seized and sold unless proof of payment of duty is made, abrogated by L. 1825, ch. 326, §§ 2, 6, 22.

Section 8, relating to penalty for counterfeiting inspection marks, was abrogated by L. 1823, ch. 235, § 4, which prescribes that the punishment shall be the same as that provided for by L. 1812, ch. 164, § 10.

Section 9, requiring name of manufacturer to be placed on all packages of salt abrogated by L. 1825, ch. 326, § 21, which contains same matter.

Section 10, relating to actions for penalties and forfeitures, abrogated by L. 1825, ch. 326, § 54, which covers the same matter.

Section 11 provides for service on Sunday of warrant of arrest in actions brought for forfeiture, abrogated by L. 1825, ch. 326, § 27, which covers the same matter.

Section 12, providing for imprisonment in case where judgment for forfeiture cannot be satisfied out of property of defendant, abrogated by L. 1825, ch. 326, § 32, which covers the same matter.

Section 13 provides that if persons are found transporting fine salt in any of the counties west of the county of Oneida in the western district of this state which shall be of the quality and appearance of the fine salt manufactured at the different salt manufactories in the western district it shall be deemed to be prima facie evidence that said salt was actually manufactured at some one of the salt manufactories in the said western district. L. 1825, ch. 326, § 22, provides: " * * and in case any barrels or casks of fine salt of the appearance and quality of salt usually manufactured in that district of country, which by the act, entitled 'An act respecting the four great senatorial districts of the state,' passed April 17, 1815 [L. 1815, ch. 208], was denominated 'the western district, shall be found in any of the counties in said district, and which barrels or casks shall not be marked or branded in manner directed by this act, it shall be lawful for any of the officers or persons mentioned in this section, to seize all such salt, and the same to sell for the use of the people in manner before directed, *unless the owner of said salt, or the person having the same in possession, shall prove to the satisfaction of the persons seizing the same that the duties thereon have been actually paid.*' "

Section 14 provides that in case an inhabitant of Onondaga county be prosecuted under warrant issued by a justice of the peace of said county for aiding in the removal of salt on which the duties are not paid, it shall not be lawful for the justice to adjourn such cause on the prayer of the defendant, unless the defendant

consents to have the testimony of witnesses then present for the people, and who reside in Onondaga county, taken and reduced to writing. And further, that the testimony so taken shall be received in evidence on the trial of the cause. L. 1825, ch. 326, § 28, re-enacts the same provision.

Section 15 provides that if any action of trespass on the case, trover, trespass, battery, or false imprisonment be brought against the superintendent or deputies and assistants, the action must be laid in the county where the act was committed; that the persons aforesaid may plead the general issue and give the special matter in evidence; that if the plaintiff shall not prove that the act was committed in the county in which the action is laid, the jury will find the defendant not guilty. L. 1825, ch. 326, § 34, re-enacts the same, with new matter.

Section 16 provides that no action shall be brought against the superintendent or assistants for destruction of poor salt unless such destruction shall be proven to have been done wilfully and maliciously and without just or probable cause. L. 1825, ch. 326, § 16, re-enacts same, with new matter, and substituting inspectors or deputies in place of superintendent and assistants. L. 1825, ch. 326, places inspection of salt in inspectors instead of the superintendent.

Section 17 provides that rules, regulations, orders and penalties shall be printed and posted in certain places. L. 1825, ch. 326, § 33, re-enacts same, omitting the words "and in the cabins of canal boats."

Section 18, pt., relating to the Montezuma salt springs, was revised in R. S., pt. 1, ch. 9, tit. 10, art. 7, "Of the Salt Springs of Montezuma," and was therefore repealed under the provisions of L. 1828, ch. 21, § 1, ¶ 549, 2 meet.

Section 20 provides that the duty on coarse salt manufactured in the western district of a quality equal to that of Cape Cod salt shall be estimated on the measured bushel of salt, and not on the bushel of 56 pounds, for the term of 10 years from the passage of this act. Temporary and now obsolete.

Section 21 authorized individuals and corporations to erect works for manufacture of coarse salt on land of the state reserved by commissioners of land office for that purpose, and that they may hold the land so occupied for said purpose for the term of twenty years from and after the passage of the statute. Expired by limitation and obsolete.

Section 22 provides that it shall be lawful for individuals or companies erecting manufactories of coarse salt to pump surplus water from the salt springs at Salina and carry same in aqueducts to reservoirs and from reservoirs to their manufactories; to use the surplus water of Erie canal on the Salina level for that purpose, and to enter upon lands necessary for erecting pump works, reservoirs and aqueducts on paying to proprietors of said lands the value of the damages done by carrying such aqueducts across lands to be appraised by three commissioners to be appointed by judge of the supreme court; the individual or company erecting said pump works obligated to furnish salt water for other works at a rate not exceeding two mills per bushel for salt manufactured from said water, where there shall be sufficient surplus water in the canal and in the salt springs, for the term of 20 years from the passage of this act. Provided the rights hereby granted are upon the condition that the people may take possession and management of said works by paying the fair value thereof. L. 1825, ch. 326, § 8, provides that the engineer of the pump works at Salina, pursuant to the act of April 3, 1821 (L. 1821, ch. 231, § 22), take in the name of the people the pumps, reservoirs, houses, buildings, wells, and machinery in the village of Salina constructed by the Syracuse Salt Company and the Onondaga Salt Company pursuant to said cited act. (L. 1821, ch. 231, § 22.) L. 1825, ch. 326, §§ 9-11, further provides for the use of surplus water of the canal and the use and distribution of salt water. Said L. 1825, ch. 326, §§ 8, 9, 10, 11, supersedes and abrogates the statute affected. (L. 1821, ch. 231, § 22.)

Section 23 provides that the superintendent of the salt springs may in case he shall deem it for the interest of the state, to prevent frauds on the revenue, charge the duties on the salt water manufactured in the vats or pans according to the quantity of salt it is capable of producing; duties to be paid quarterly in January, April, July and October. Also provides for the sale of manufactories in case of nonpayment of duties. L. 1825, ch. 326, §§ 23, 38, provide for the payment of duties on salt water supplied at the rate of two mills on each bushel of salt manufactured, payable quarterly; also provide for sale of kettles, pans or other implements used for manufacturing salt in case of nonpayment of salt water duties, thereby superseding L. 1821, ch. 231, § 23.

Section 24 provides that any person injuring any pump works, aqueducts or reservoirs constructed under the act shall be liable to an action of trespass at the

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suit of the owners, the same as if the owners were the owners of the land, and the plaintiff shall be entitled to consequential damages. L. 1825, ch. 326, § 40, provides that if any person * * * shall wilfully burn or destroy any of the buildings, reservoirs, pumps, conductors or water conduits belonging to the people of the state used for raising salt water * * * or shall wilfully injure the same with the intention to prevent or retard the pumping or raising of salt water * * * such person shall be adjudged guilty of felony and on conviction shall be sentenced to state prison for not exceeding five years. L. 1825, ch. 326, § 51, provides that owners of salt manufactories may enter on lands of others and carry water across such lands by means of conduits and aqueducts and that if any person shall wilfully injure any such conduit or aqueduct or any cistern, reservoir, receiver, vat or trough, he shall be deemed guilty of a misdemeanor and shall forfeit the sum of \$50, and also be subject to imprisonment not exceeding three months, and also be liable for trespass to the party injured, who shall recover treble damages and costs.

Section 25 provides that the duty on salt manufactured west of Seneca lake shall be paid to the canal commissioners. Statute affected was revised in R. S., pt. 1, ch. 9, tit. 10, art. 1, § 3, requiring duty to be paid to state treasurer, and therefore was repealed under the provisions of L. 1828, ch. 21, § 1, ¶ 549, 2 meet.

Section 27 directs commissioners of land office to set apart suitable land between Salina and Erie canal for the erection of manufactories of coarse salt, according to the provisions of the act. (L. 1821, ch. 231.) Statute affected is directory and applies to commissioners of land office. It has no bearing on the manufacture of salt, the inspection thereof or the regulations governing the use of the water or of the land. If the direction was executed, the land came under the statute; if not executed it was a nullity. In either case the statute affected (L. 1821, ch. 231, § 27) is obsolete.

L. 1822, ch. 177.—Section 7 provides for a bounty of three cents on coarse salt manufactured in the western district which shall be delivered on the banks of the Hudson river, or at Buffalo or which shall be shipped from Oswego to the province of Upper Canada for the term of five years from and after the expiration of the term of five years from the time of passing this act. (April 12, 1822.) Expired by limitation in 1827.

L. 1822, ch. 194.—Exempts from duty salt made prior to March 1, 1822, in counties of Monroe, Genesee or Niagara and relieves from penalty for failure to pay duty persons who manufactured same. Temporary and obsolete.

L. 1823, ch. 235.—Section 1, directing the inspection of salt, was superseded by L. 1825, ch. 326, § 13, which re-enacted the same with new matter.

Section 2 provides for the appointment of an inspector of salt and his deputies; the giving of bonds and taking oath of office by these officers. L. 1825, ch. 326, §§ 1, 6, re-enacts same together with new matter.

Section 3 specifies the manner of making the inspection of salt, marking of packages and the keeping of the records of the quantity of salt inspected. L. 1825, ch. 326, § 14, is a re-enactment of the statute cited with slight verbal changes and new matter.

Section 4 providing a penalty for counterfeiting the mark or brand of an inspector, superseded by L. 1825, ch. 326, § 15, which enacts same with slight verbal changes and additions.

Section 5 provides for the payment of the inspector for his services at the rate of three mills per bushel of salt inspected. L. 1825, ch. 326, § 36, re-enacts same together with new matter.

Section 6 provides the hours during which the offices for the receipt of public moneys shall be kept open; that no salt shall be inspected after dark and before daylight; that no manufacturer shall sell or deliver any salt for the purpose of its being transported away by teams or boats after 7 in the evening and before 5 in the morning, and from Oct. 1, to March 1, between the hours of 6 in the evening and 7 in the morning; provides a penalty of \$25.00 for every offense. L. 1825, ch. 326, § 31, re-enacts the statute affected with slight changes.

Section 7 provides a penalty for any inspector or his assistant consenting to, conniving at, aiding or abetting in smuggling of salt or transporting same away so as to evade payment of duties. L. 1825, ch. 326, § 30, re-enacts same without change of wording except "assistant" changed to "deputy."

Section 8 provides for keeping the book of entries (required by L. 1823, ch. 235, § 3), that it shall be open for examination during office hours. Also provides for a report or account to be made by the superintendent monthly to the comptroller and the payment of the balance shown by the report to the state

treasurer. Also that as often as the superintendent shall have on hand the sum of \$5,000 he shall transmit same to the state treasurer. L. 1825, ch. 326, § 35, is a re-enactment of statute affected together with new matter.

Section 9 provides that the inspector or one of his deputies shall visit each day, Sundays excepted, the manufactories and if any bad salt is found to order same dissolved and if the order is not followed then the inspector shall destroy same. L. 1825, ch. 326, § 16, is a substantial re-enactment of the subject matter of statute affected.

Section 10 provides for compensation of inspectors; that they shall not receive the duties paid on salt and not be interested in any salt manufactory. L. 1825, ch. 326, § 36, provides for compensation of inspector of salt and forbids any inspector or assistant being or becoming interested in manufacture of salt, and is a substantial re-enactment of statute affected with new matter.

Section 11 provides that no salt shall be placed in packages until the inspector has determined the same to be fit for inspection. L. 1825, ch. 326, § 17, is a re-enactment thereof without verbal change except that "assistants" is changed to "deputies."

Section 12 gives superintendent power to make orders and regulations relating to the manufacture of salt and to enforce same. L. 1825, ch. 326, § 12, is a re-enactment of the subject matter of statute affected with verbal changes and new matter.

Section 13 provides a penalty for the defrauding of the revenue of the state. L. 1825, ch. 326, § 29, is a re-enactment thereof with the exception that the sentence "for the residue of the term for which it shall be leased" is omitted.

Section 14 provides for the marking of barrels with the name of the manufacturer of the salt contained therein and also provides a penalty for failure to mark the barrels. L. 1825, ch. 326, § 21, is a re-enactment of the subject matter thereof with verbal changes.

Section 15 provides a penalty for the removal of salt before same shall have been inspected. L. 1825, ch. 326, § 22, is a re-enactment of the subject matter thereof with verbal changes.

Section 16 provides for the inspection of salt which is to be kept in store and the manner in which it shall be stored. L. 1825, ch. 326, § 18, is a re-enactment of statute affected.

Section 17 authorized the superintendent to lay out certain salt manufacturing lots on the Salt Springs reservation and upon surrender of the land thus laid out by the lessors thereof, provided for the prior right of selection of salt manufacturing lots by such lessors. Obsolete.

Section 18 directs apportionment of the lots authorized to be laid out in pursuance of § 17 thereof, among those desiring in June, 1823, to engage thereon in the manufacture of salt. Temporary and obsolete.

Section 19 permits persons desiring to engage in manufacture of salt to select from the lots authorized to be laid out under provisions of § 17 thereof, for the purpose of building salt manufactories thereon. Temporary and obsolete.

Sections 20, 21, permitting owners of lots on the canal from Elm street to Onondaga lake and not in village of Salina, to manufacture salt thereon. L. 1825, ch. 326, § 46, is a re-enactment thereof.

Section 22 provides for a daily tax for the use of salt water for the purpose of securing the collection of duties on salt. L. 1825, ch. 326, § 23, is a re-enactment of the same except as to the proviso at the end thereof.

Section 23 is a provision whereby manufacturers of salt may keep their works in operation when there is no sale for the salt and also provides for storing the salt until it is inspected. L. 1825, ch. 326, § 24, is a re-enactment of statute affected.

Section 24 requires the superintendent to report to the legislature convening in 1824 as to various matters connected with the salt springs. Temporary and obsolete.

Section 26 authorizes superintendent of Salt Springs to increase the number of lots on the reservation and all manufacturers hereafter locating on said lots shall be subject to a daily tax on kettles set therein. Temporary and obsolete.

Section 27 provides for furnishing salt water to the works erected pursuant to the provisions of L. 1823, ch. 235. Statute was abrogated by L. 1825, ch. 326, § 12, which provides for the method of supplying salt water to the various manufactories of salt.

Sections 28, 29 authorize the construction of a side cut in the canal by private parties at their own expense on route designated by canal commissioners and

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direct superintendent of Salt Springs to lay out lots on the banks of said canal. Temporary and obsolete.

Section 30 directs superintendent to grant lease of certain lots directed to be laid out by this act to persons complying with certain conditions as to structures to be placed on said lots. Temporary and obsolete.

Section 31, providing for appointment of superintendent of Salt Springs, was abrogated by L. 1825, ch. 326, § 1, which directs the method of the appointment.

Section 32 provides for a duty upon salt manufactured in town of Salina by solar evaporation of $12\frac{1}{2}$ cents per bushel of 56 pounds; that the inspector shall inspect such coarse salt at the place where it is manufactured; that the inspector shall not be called to inspect less than 500 bushels at one time; that the blanks, forms and books shall be provided by the superintendent. L. 1825, ch. 326, § 56, provides that the duties on salt shall be $12\frac{1}{2}$ cents on the bushel of 56 pounds. L. 1825, ch. 326, §§ 13, 14, provide for the inspection of salt. L. 1825, ch. 326, § 53, makes it the duty of the superintendent to provide proper blank inspectors' bills, books of entry and blank returns.

Section 33 was abrogated by L. 1825, ch. 326, § 8, which provides for the taking over by the state of all pump works and appurtenances and for compensating the companies or persons owning such works for the same.

Section 34 providing a penalty for causing salt water to run to waste was abrogated by L. 1825, ch. 326, § 20, which provides a penalty for permitting by negligence the waste of salt water.

L. 1825, ch. 5.—Provides for a commission to examine into and report to the legislature the condition of the Salt Springs. Temporary and obsolete.

L. 1826, ch. 318.—Regulates the renewal for one year of the leases of salt lots expiring in 1828 and the covenants to be contained in such renewals and the recording of said leases in superintendent's books. Temporary and obsolete.

L. 1829, ch. 278, §§ 1-4, 6, 7.—Sections 1-4 authorize superintendent of the Salt Springs to lease for term of thirty years from June 20, 1829, lots on Salt Springs reservation and to sell certain buildings on certain lots on said reservation and to erect a fire-proof building for his office. Also that leases and assignments of leases under this act shall be recorded in the office of the superintendent instead of in the county clerk's office. Also authorize superintendent to sell so-called state house on Salt Springs reservation and to lease certain lots near said house. Temporary and obsolete.

Section 6, relating to penalties recovered for smuggling salt, abrogated by L. 1859, ch. 346, § 115, which is a literal re-enactment thereof.

Section 7 abrogated by L. 1859, ch. 346, §§ 104, 105, which provide that persons removing salt from the reservation with intent to evade payment of duty shall forfeit five dollars for every bushel so removed.

L. 1831, ch. 174.—Provides that the superintendent shall deposit moneys received by him once a week in a bank to be specified by the canal board. Superseded by L. 1843, ch. 229, § 3.

L. 1832, ch. 243.—Section 2 provided that when owners of real estate adjoining the salt lots in village of Liverpool shall lay the same out into lots, and, after obtaining permission of the superintendent and inspector, shall enter into a covenant as provided for by R. S., pt. 1, ch. 9, tit. 10, art. 4, § 97, such owner shall be entitled to erect a salt manufactory and take the necessary supply of salt water according to existing laws in that respect. Statute affected is an addition to R. S., pt. 1, ch. 9, tit. 10, art. 4, §§ 96-98, and extends to owners of real estate near the salt lots in village of Liverpool, in terms, privileges which the R. S. cited give to owners of real estate in the town of Salina. Liverpool is included in the town of Salina.

L. 1859, ch. 346, (an act concerning the Salt Springs and the manufacture of salt) by § 144, repeals R. S., pt. 1, ch. 9, tit. 10, and all acts and parts of acts in addition to or amendatory thereof.

Section 1 provides for the leasing of salt lots, leases to expire at same time with leases authorized by L. 1829, ch. 278. Statute affected became obsolete in 1859, and was superseded by L. 1859, ch. 346, § 23, which provided that the superintendent might lease any of the lots and lands reserved for the manufacture of salt not held for that purpose, but not for a longer period than three years.

Section 3 authorizes superintendent to sell such personal property belonging to the state in the town of Salina which inspector shall deem unnecessary and for the interest of the state to sell. Temporary and obsolete.

Section 6 provides that if salt shall be put in barrels, it shall not be marked

first quality unless the barrels meet with certain conditions as to make and cleanliness. L. 1841, ch. 183, § 19, amended statute affected by repealing the words "first quality." L. 1859, ch. 346, § 88, supersedes by re-enacting statute affected as amended by L. 1841, ch. 183, § 19.

L. 1833, ch. 264.—Provides for method of holding election to vote upon amendment to Constitution permitting reduction of the amount of duty. Obsolete.

L. 1834, ch. 201, §§ 1-23.—Section 1 provides for the annulling of certain leases of surplus water from the canal, and also extends R. S., pt. 1, ch. 9, tit. 10, § 54, to authorize superintendent of the Salt Springs to take surplus water from the Erie canal on the Salina level. The first part of statute affected relating to annulling leases is obsolete, and the remainder of the section is superseded by L. 1859, ch. 346, § 33, and repealed under the provisions of L. 1859, ch. 346, § 144.

Sections 2-6, 8 are in addition to R. S., pt. 1, ch. 9, tit. 10, art. 4, § 87, and come within the repeal by L. 1859, ch. 346, § 144.

Sections 9-12 provide for procedure in cases when the superintendent shall have reason to suspect that the laws are being violated and are in addition to R. S., pt. 1, ch. 9, tit. 10, art. 5, and come under the repeal by L. 1859, ch. 346, § 144, of R. S., pt. 1, ch. 9, tit. 10, and all acts and parts of acts in addition to or amendatory thereof. The provisions of the statute affected are re-enacted in L. 1859, ch. 346, §§ 111-114.

Sections 13-19, 22, 23 are in addition to R. S., pt. 1, ch. 9, tit. 10, "Of the Salt Springs": sections 13-15 being in addition to R. S., pt. 1, ch. 9, tit. 10, §§ 141, 142; sections 16, 17, being in addition to R. S., pt. 1, ch. 9, tit. 10, § 144; sections 18, 19 being in addition to R. S., pt. 1, ch. 9, tit. 10, § 142; section 22 being an amendment to R. S., pt. 1, ch. 9, tit. 10, § 11; section 23 being an amendment to R. S., pt. 1, ch. 9, tit. 10, § 125.

L. 1859, ch. 346, § 144, repeals R. S., pt. 1, ch. 9, tit. 10, entitled "Of the Salt Springs" and all acts and parts of acts in addition to or amendatory thereof. Of the statute affected (L. 1834, ch. 201, §§ 13-19) the following sections were enacted or revised in L. 1859, ch. 346:

L. 1834, ch. 201, § 16, in L. 1859, ch. 346, § 108.

L. 1834, ch. 201, § 17, in L. 1859, ch. 346, § 109.

L. 1834, ch. 201, § 18, in L. 1859, ch. 346, § 135.

L. 1834, ch. 201, § 19, in L. 1859, ch. 346, § 136.

L. 1834, ch. 201, § 22, in L. 1859, ch. 346, § 6.

L. 1834, ch. 201, § 23, in L. 1859, ch. 346, § 101.

L. 1834, ch. 201, §§ 20, 21, were superseded by L. 1846, ch. 188, §§ 4, 5.

L. 1837, ch. 115.—Authorizes purchase for state by the superintendent of the Salt Springs certain lots of land in village of Geddes belonging to Freeman Hughes by exchange if possible for state lands. Temporary and obsolete.

L. 1837, ch. 233.—Is "An act to amend article five, title tenth, chapter ninth, part first, of the Revised Statutes, entitled 'Regulations and penalties on the inspection, packing and removal of salt, and the payment of duties.'" Statute affected comes under the repeal by L. 1859, ch. 346, § 144, of R. S., pt. 1, ch. 9, tit. 10, "and all acts and parts of acts in addition to or amendatory thereof."

L. 1837, ch. 277.—Provides that the superintendent of the Salt Springs may take into the Liverpool level of the Oswego canal any stream of water flowing under the same; that water may be taken from said canal sufficient to carry a pump for the purpose of raising salt water at Liverpool; that the water shall be taken under the direction of the canal commissioners; that damages claimed for the diversion of the streams shall be ascertained and paid in the manner provided by R. S., pt. 1, ch. 9, tit. 10, §§ 52, 53. This act is in addition to R. S., pt. 1, ch. 9, tit. 10, and extends the right of the superintendent to take water from the canals, and comes under the repeal by L. 1859, ch. 346, § 144, of R. S., pt. 1, ch. 9, tit. 10, "and all acts and parts of acts in addition to or amendatory thereof."

L. 1838, ch. 291, §§ 1-3, 6-8.—Section 1 provides for the boring of a well "in the vicinity of some one of the wells in the town of Salina to the depth of 600 feet unless fossil salt or brine of the maximum strength shall be sooner found"; the superintendent not to expend more than \$8,000 for this purpose. Temporary and obsolete.

Section 3 provides that underletting or diversion of lots to any other purpose than the manufacture of salt shall work a forfeiture of the lease. Abrogated by L. 1859, ch. 346, § 22, which was a re-enactment of the substance thereof.

Section 6 provides that unless the reservoirs in salt manufactories are made in accordance with the law, no salt water shall be furnished them. L. 1859, ch. 346,

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§§ 71, 72, is a substantial re-enactment of the provisions of statute affected.

Section 7 provides: 1. That the attorney-general shall furnish to the superintendent a form for the leases of salt lots in the town of Salina. 2. That the form shall be adopted in all leases hereafter executed. The former provision was temporary, the latter is obsolete.

Section 8 provides that the superintendent shall procure a set of standard instruments and make observations once in each week upon the strength of the brine in the salt wells in use by the state, and state the results of such observations in his annual report to the legislature. Superseded by L. 1859, ch. 346, § 13, which specifies what the annual report of the superintendent shall contain.

L. 1839, ch. 341, § 3.—The last section of a statute authorizing the laying out of salt lots on the berme bank of the canal between block No. 6 in the village of Geddes and the natural basin. Statute affected provides that the superintendent may lease any of these lots "in the manner now provided by law." Statute affected is obsolete and was superseded by L. 1859, ch. 346, § 23, which provides that the superintendent may lease any of the lots or lands of this state reserved for the manufacture of salt and not lawfully held or occupied for that purpose, but not for a longer period than three years.

L. 1841, ch. 183, §§ 7-9, 13-20.—Section 7 gives superintendent authority to lay down and keep in repair conduits from the public reservoirs. Amended by L. 1857, ch. 578, § 10, and superseded by L. 1859, ch. 346, § 38.

Section 8 provides:

1. The appointment of inspector of barrels in each of the villages of Syracuse, Salina, Liverpool and Geddes.

2. The fees for inspection.

3. The rejection by the inspector of salt of all salt packed in barrels that have not been inspected. By L. 1842, ch. 302, § 2, "all laws heretofore passed in relation to the inspection of salt barrels in the town of Salina are hereby repealed."

Statute last cited (L. 1842, ch. 302), § 1, abrogates statute affected by providing that "it shall be the duty of the inspector of salt in the county of Onondaga and his deputies to inspect all salt barrels before the same are used for packing salt therein * * * and all salt shall be rejected when offered for inspection in barrels not inspected * * *."

Section 13 is an amendment of R. S., pt. 1, ch. 9, tit. 10, § 96, and comes under the repeal by L. 1859, ch. 346, § 144, of R. S., pt. 1, ch. 9, tit. 10, "and all acts and parts of acts in addition to or amendatory thereof."

Section 14 provides for the compensation of the deputy superintendent and of the inspector at Liverpool. L. 1846, ch. 188, §§ 4, 5, supersedes statute affected by providing what their compensation shall be.

Section 15 provides a penalty for an unreasonable waste of brine at salt manufactories either from overflowing or leakage of cisterns, aqueducts or conduits or in any other manner. Statute affected superseded by L. 1859, ch. 346, §§ 67, 68, which provide that the superintendent or deputy in his daily examinations shall examine particularly as to any leaks or waste of salt water from cisterns, attached to the several salt manufactories, or from logs or conduits leading the water to the same; and as to any leak or waste of salt water either by negligence or design; and to order the stopping of such leak or waste. In case the order shall not be complied with all communication between such manufactories and the logs and conduits leading to the state reservoirs shall be stopped and no more salt water shall come to such manufactory for any period not to exceed 30 days, at the discretion of the superintendent.

Section 17 authorizes commissioners of canal fund to employ an agent to visit other states for the purpose of ascertaining what measures can be adopted to increase revenue by allowing a drawback of a portion of the duty on salt; authorizes the commissioners to allow such drawback of said duties as will extend the market for salt. Temporary and obsolete.

Section 18 provides that the superintendent may alter the inspection districts in town of Salina. Superseded by L. 1859, ch. 346, § 5, which provides for four manufacturing districts and locates the public offices for the transaction of business connected with the manufacture of salt.

Section 19 provides that the superintendent of Montezuma Salt Springs shall sink a shaft already commenced to a depth of 600 feet; to enlarge and complete reservoir and machinery already commenced and to cut a certain ditch. Obsolete.

Section 20 appropriates money for sinking the shaft mentioned in § 19 of statute affected. Temporary and obsolete.

L. 1842, ch. 302, §§ 1, 2, pt. 3-6.—Section 1 provides that it is the duty of the inspector of salt in Onondaga county and his deputies to inspect salt barrels before same are used for packing salt and that all salt shall be rejected when offered for inspection in barrels not inspected or in inspected barrels when not properly secured after the salt is packed therein. L. 1859, ch. 346, §§ 6, 90, supersede statute affected, section 6 providing for the appointment of a chief inspector of barrels and assistants, and § 90 providing that "all salt shall be rejected when offered for inspection in barrels not inspected or in inspected barrels not properly secured after salt is packed therein."

Sections 3-6 regulate use of drawbridge across lateral to canal and authorize purchase of certain land for addition to state reservation. Temporary and obsolete.

Section 8 authorizes superintendent of Salt Springs to charge in his account, expense of defending certain actions for infringement of patent right. Temporary and obsolete.

L. 1843, ch. 184, entitled "An act to increase the revenues of the state by extending the market for salt, coal and lead," provides for the payment of bounties upon salt (and upon certain minerals). By the terms of § 7 this act was to continue in force for two years from the time of its passage. L. 1845, ch. 19, amends § 7 of statute affected so as to read: "This act shall continue in force until the same shall be repealed, altered or modified by the legislature." L. 1846, ch. 71, § 1, repeals L. 1845, ch. 19.

L. 1843, ch. 229.—Sections 1, 2 provide that the superintendent and inspector shall give their personal and constant attention to their official duties; shall not engage in any business inconsistent with the proper discharge of their duties, and (§ 2) that the person administering the government of the state shall remove, for cause shown, either officer and appoint another person. L. 1859, ch. 346, § 18, supersedes § 1 of statute affected; § 3 supersedes § 2 of statute affected and § 4 supersedes that part of § 1 of statute affected, which requires personal and constant attendance to duties, by requiring a bond conditioned that the superintendent shall faithfully perform his duties. By L. 1846, ch. 188, the office of inspector is abolished.

Section 3 provides for the deposit by the superintendent of moneys received by him in certain banks, and the forwarding to the comptroller of a statement of moneys so deposited. L. 1859, ch. 346, § 26, re-enacts and supersedes statute affected.

Section 4 provides that the superintendent, before any expenses are incurred by him, shall make an estimate for the necessary expenses for two months from and after May 1, next (1843); present same to the acting canal commissioner in charge of the section of the canal from which water is drawn for the salt works and obtain his certificate that the expenditure is necessary; that a duplicate of estimate be sent to the comptroller. Also provides that no new structure the cost of which shall exceed \$5,000 shall be undertaken without first obtaining the approval of the governor. L. 1859, ch. 346, § 36, supersedes the first part of statute affected by providing the method by which the superintendent shall make estimate for expenses to be incurred; for the approval thereof by the comptroller and for drawing a draft therefor on the treasurer. L. 1859, ch. 346, § 10, provides for the expenditure of money by the superintendent in repairs and alterations, and also provides that no new structure the estimated cost of which shall be \$5,000 or more shall be undertaken without the approval of the governor and comptroller.

Section 5 provides that moneys advanced to the superintendent shall be kept separately as an official account in such bank as the comptroller shall designate, provided the officers of the bank furnish a monthly statement of the account to the comptroller. L. 1859, ch. 346, § 26, also relates to deposit of money received by the superintendent and supersedes statute affected.

Section 6 provides that at the close of every sixty days the superintendent shall make an abstract of his vouchers attaching thereto an affidavit, the form of which is given; that he shall also make a report showing his expenditures for the previous sixty days corresponding as to the items with the estimate presented at the time the advance is certified by the canal commissioners; provides for the approval of the abstract and report by the canal commissioner and the return of the whole to the comptroller for final audit. L. 1859, ch. 346, § 37, supersedes statute affected by re-enacting same, omitting the certificates of the canal commissioner.

Section 7 provides that the superintendent shall on every fourth Monday send to the comptroller a statement of the revenue collected during the previous four

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weeks and a transcript of the receiver's books in the villages of Salina, Syracuse, Geddes and Liverpool. L. 1859, ch. 346, § 27, supersedes statute affected.

Section 8 provides for the inspector making a report to the comptroller on every fourth Monday of the number of bushels of salt inspected in the villages of Salina, Syracuse, Geddes and Liverpool. L. 1846, ch. 188, § 2, abolished the office of inspector and makes the inspectors appointees of the superintendent. L. 1859, ch. 346, § 13, supersedes statute affected by requiring an annual report by the superintendent to the comptroller showing, among other data, the quantity of salt inspected during the previous fiscal year.

Section 9 provides that it is the duty of the superintendent and inspector to regulate the size of the furnaces used in manufacturing salt "that saturation may not be effected too rapidly, allowing the bitters or sulphate of lime to settle." Superseded by L. 1859, ch. 346, § 9, which gives the superintendent power to establish rules and regulations respecting, among other things, the manufacture of salt.

Sections 10, 11 providing for the inspection of salt manufactories and the salt in the kettles and bins, were superseded by L. 1859, ch. 346, § 76, which covers the same subject.

Section 12 provides that when salt blocks are cooled for the purpose of cutting the bitters from the kettles and pans, the brine remaining in the kettles shall not be again used. Superseded by L. 1859, ch. 346, § 65.

Section 13 providing that salt shall not be packed, or taken from the salt works until it has remained in the bin at least fourteen days, was amended by L. 1856, ch. 95, § 9, and as amended, was superseded by L. 1859, ch. 346, § 95.

Section 14, which provides a penalty for putting any article or ingredient in the brine without first obtaining the approbation of the inspector, was superseded by L. 1859, ch. 346, § 63.

Section 15, which provides for the annual making of rules and regulations for the ensuing year by the superintendent and inspector, superseded by L. 1859, ch. 346, § 9, which authorizes superintendent to make rules and regulations, and § 12, which authorizes him to print and post the same.

Section 16, providing a penalty for failure to comply with rules and regulations, was superseded by L. 1859, ch. 346, § 66.

L. 1846, ch. 71, §§ 1, 2, except the part which repeals "all laws prescribing a higher rate of duty," provide a duty of one cent a bushel of fifty-six pounds weight on all salt manufactured in this state. Superseded by L. 1859, ch. 346, § 1, which re-enacts the same provision together with other matter.

L. 1846, ch. 188.—Provides: Section 1, that the duties of inspector shall be performed by the superintendent. Section 2, that the office of inspector is abolished. Section 3, superintendent to appoint deputies at the villages of Salina, other packages. Superseded by L. 1859, ch. 346, § 9, ¶ 1, which gives the superintendent and principal deputies. This section was amended by L. 1850, ch. 374, § 8, "so as to read as follows," and supersedes L. 1846, ch. 188, § 4.

Section 5, except so much as repeals R. S., pt. 1, ch. 9, tit. 10, §§ 41, 69, fixes the compensation of the principal deputy inspectors. This section was amended by L. 1850, ch. 374, § 9, "so as to read as follows." The provisions of statute affected were superseded by L. 1859, ch. 346, art. 2.

Section 6, which provides that the superintendent of the Salt Springs execute a bond, superseded by L. 1859, ch. 346, § 4.

Section 7, which abolishes the office of superintendent of the Montezuma Salt Springs, superseded by L. 1859, ch. 346, art. 7, which provides for the charge of the Montezuma Salt Springs.

L. 1847, ch. 154.—Appropriates several sums of money for use at the Salt Springs. Temporary and obsolete.

L. 1848, ch. 187.—Provides that salt put up in bags containing less than one bushel shall contain either twenty or twenty-eight pounds; that the sacks shall be marked with the name of the manufacturer and the number of pounds; that such salt shall be subject to a duty of one cent per bushel; that the penalty for the removal of such salt without its being inspected shall be the same as for other salt. Amended by L. 1851, ch. 281, § 1, prescribing that the superintendent shall from time to time specify the quantity of salt to be contained in bags or other packages. Superseded by L. 1859, ch. 346, § 9, ¶ 1, which gives the superintendent authority to make regulations to govern the manufacture and inspection of salt and the collection of duties thereon; by § 99 providing that salt shall not be removed without inspection; by §§ 100-101 which relate to branding the packages.

L. 1850, ch. 374.—Section 1 superseded by L. 1892, ch. 684, § 22, "The Salt

Salt Springs Law." Sections 2-4 relate to a series of experiments which statute affected directs to be made, with a view to determine whether any method can be adopted to free the brine from its impurities which shall be more effectual than those now practiced by the manufacturers of salt. Temporary and obsolete.

Sections 5, 6, 9 amended by L. 1851, ch. 281, §§ 3, 4, 5 "to read as follows" and thus superseded.

Section 7 provides that if on opening branded packages the salt therein is found to be of a quality inferior to that required by law, the inspector who inspected the same and the manufacturer shall each be liable to a penalty of five dollars for each package. Superseded by L. 1859, ch. 346, § 118.

Section 8 relates to compensation of superintendent and principal deputies. Superseded by L. 1854, ch. 334, § 1.

Section 10, providing that brine for fine salt manufacture shall not be furnished during December, January, February, and March, superseded by L. 1859, ch. 346, § 61, which is a re-enactment of the substance of the same.

L. 1851, ch. 281.—Sections 1, 2, relating to quantity of salt to be contained in bags or other packages, were superseded by L. 1859, ch. 346, § 9, which gives the superintendent of the Salt Springs power to make rules and regulations respecting the manufacture and inspection of salt.

Section 3 is an amendment to L. 1850, ch. 374, § 6, and authorized appointment of a chief engineer; superseded by L. 1859, ch. 346, § 6, which empowers superintendent of Salt Springs to appoint a chief engineer.

Section 4 provides for the compensation of a chief engineer. Superseded by L. 1856, ch. 95, § 18.

Section 5 provides for compensation of principal deputy inspector at Geddes, and all of the deputy weighers and inspectors of barrels. Superseded by L. 1859, ch. 346, § 7.

Section 6 authorizes the superintendent of Salt Springs to remove obstructions in outlet of Onondaga lake and makes an appropriation therefor. Temporary and obsolete.

L. 1851, ch. 283.—Authorizes commissioners of land office to sell certain land belonging to the state in Syracuse and to buy other land in place thereof, and regulates the use thereof. Temporary and obsolete.

L. 1854, ch. 136.—Authorizes commissioners of the land office to sell certain state lands in Syracuse used for the manufacture of salt and to purchase certain land upon which to move the salt manufactories from the land sold and regulates the use of the purchased land. Temporary and obsolete.

L. 1854, ch. 334.—Fixes salaries of officials at the Salt Springs; was amended by L. 1856, ch. 95, § 8, and whole was superseded by L. 1859, ch. 346, § 7.

L. 1856, ch. 95, §§ 3, 4, 8, 9.—Sections 3, 4 regulate the use of state land at the Salt Springs. Temporary and obsolete. Section 8, which fixes salary of superintendent and chief engineer, was superseded by L. 1859, ch. 346, § 7, which fixes the salaries of the officers of the Salt Springs.

L. 1857, ch. 578.—Section 1 provides that the superintendent of Onondaga Salt Springs shall lease for a term of thirty years from June 20, 1857, certain state lands at the Salt Springs, and also states what effect such leases shall have. Temporary and obsolete.

Section 2 is temporary in that it directs the superintendent of the Salt Springs to have surveyed certain state lands, and cause a map to be made in accordance with said survey.

Section 3, regulating the distribution of brine, was superseded by L. 1859, ch. 346, § 41, which is a re-enactment of the substance thereof.

Section 4, limiting the distribution of brine, was superseded by L. 1859, ch. 346, § 47, which regulates the distribution of brine.

Section 5, authorizing the appointment of one of the principal deputy inspectors to perform the duties of chief inspectors, superseded by L. 1859, ch. 346, §§ 6, 76.

Section 6, prescribing duties of deputy inspector, was superseded by L. 1859, ch. 346, § 48.

Section 7, fixing compensation of inspectors, superseded by L. 1859, ch. 346, § 7.

Section 8, relating to inspection and sale of "second quality" salt, superseded by L. 1859, ch. 346, § 92, which was a re-enactment of the substance thereof.

Section 9, authorizing renewal of leases, is obsolete. Leases of salt lands are no longer executed, L. 1898, ch. 27, § 36, and same statute provides for removal of buildings.

L. 1909, ch. 54.

Consolidators' notes.

Section 10, amending L. 1841, ch. 183, § 7, superseded by L. 1859, ch. 346, § 38. Section 11 authorizes superintendent to draft revision of Salt Springs Law and report same to legislature in 1858. Temporary and obsolete.

Section 12, relating to employment of canal engineers on salt works, was abrogated by L. 1859, ch. 346, § 46, which was a re-enactment of the substance thereof.

Section 13 authorizes the sale of lots lying in blocks 21 and 24 in the fourth ward, Syracuse. Temporary and obsolete.

Sections 14-17 regulate the proceedings for the disposition of certain lands mentioned in L. 1857, ch. 578, § 13, which were authorized to be sold. Temporary and obsolete.

Section 18 was superseded by L. 1859, ch. 346, § 23, which regulates the leasing of state land not previously used for manufacturing salt.

Section 19, which fixes the term of office of superintendent, was superseded by L. 1859, ch. 346, § 3.

Section 20 is an amendment of R. S., pt. 1, ch. 9, tit. 10, art. 4, § 21, and comes under the repeal by L. 1859, ch. 346, § 144, of R. S., pt. 1, ch. 9, tit. 10, "and all acts and parts of acts in addition to or amendatory thereof."

L. 1857, ch. 601.—Relates to the improvement of the Montezuma Salt Springs, appropriating money therefor and providing for its expenditure. L. 1858, ch. 177, by §§ 1, 2 respectively amend, "so as to read as follows," §§ 1, 3 of statute affected. Sections 2, 4, 5 of statute affected are obsolete.

L. 1858, ch. 177.—Relates to improvement of Montezuma Salt Springs, and is an amendment of L. 1857, ch. 601, §§ 1, 3, 4. Temporary and obsolete.

L. 1861, ch. 289.—Authorizes superintendent of Salt Springs to exchange certain state lands for some land adjoining. Temporary and obsolete.

L. 1866, ch. 204.—Authorizes superintendent of Onondaga Salt Springs to lease certain state land to Julio H. Rae. Temporary and obsolete.

L. 1872, ch. 599.—Is an addition to L. 1859, ch. 346, and is to the effect that the act to which it is an addition shall apply to certain waters during certain periods of the year. L. 1859, ch. 346, was repealed by L. 1892, ch. 684, § 50, thereby making statute affected useless and inoperative.

L. 1884, ch. 51.—Authorizes an appropriation for setting machinery at the Salt Springs and the sale of old machinery. Temporary and obsolete.

L. 1892, ch. 684.—The Salt Springs Law was abrogated by L. 1897, ch. 261, as follows:

L. 1892, ch. 684	L. 1897, ch. 261.
§ 1.....	Re-enacted in.... § 1.
§ 2.....	Re-enacted in.... § 2.
§ 4.....	Re-enacted in.... § 3.
§ 5.....	Re-enacted in.... § 4.
§ 6.....	Superseded by... § 5.
§ 7.....	Superseded by... § 6.
§ 8, ¶¶ 3-5.	Superseded by... § 7.
§§ 9-27....	Superseded by... §§ 8-26.
§ 28.....	Superseded by... § 27.
§ 29.....	Repealed by.... § 40, being inconsistent and repugnant.
§§ 30-32...	Re-enacted in.... §§ 28-30.
§ 33.....	Superseded by... § 31.
§§ 34-35...	Re-enacted in.... §§ 32-33.
§ 37.....	Repealed by.... § 40, being inconsistent and repugnant.
§ 38.....	Re-enacted in.... § 34.
§ 39.....	Repealed by.... § 40, being inconsistent and repugnant.
§ 40.....	Repealed by.... § 40, being inconsistent and repugnant.
§ 41.....	Re-enacted in.... § 35.
§§ 42-44...	Repealed by.... § 40, being inconsistent and repugnant.
§ 45.....	Superseded by... §§ 36-38.
§§ 46-48...	Repealed by.... § 40, being inconsistent and repugnant.

Section 3 is an enactment of the constitutional (art. 7, § 7) provisions prohibiting the sale of the Salt Springs and the lands contiguous thereto. This prohibition was omitted from the Constitution, which went into effect January 1, 1895. L. 1897, ch. 261, § 36, provides for the sale of the Salt Springs Reservation land. Statute affected is inconsistent with and repugnant to L. 1897, ch. 261, and comes under the repeal by § 40 of the last cited statute.

Section 8, ¶¶ 1, 2 gives the superintendent power to lease certain salt lands and to take possession of lands leased which may be necessary for the erection of

§§ 1, 2.

Incorporation of Salvation Army.

L. 1899, ch. 468.

a reservoir, aqueduct and other appurtenances for procuring the necessary supply of salt water. L. 1897, ch. 261, § 36, providing for the sale of salt lands and the extinguishing of leases, brings statute affected within the repeal by L. 1897, ch. 261, § 40, of all acts inconsistent with or repugnant thereto.

Section 36 relates to the execution and recording of leases of lots for the manufacture of fine salt. The constitutional provision which existed at the time this statute was enacted, and which prohibited the sale of salt lands, was omitted from the Constitution, which went into effect January 1, 1895, and L. 1897, ch. 261, § 36, provided for the sale of the salt lands and the extinguishing of the leases. Statute affected was repealed by L. 1897, ch. 261, § 40, the repeal being of statutes inconsistent with and repugnant to L. 1897, ch. 261.

Section 49 provides for the printing and distribution of L. 1892, ch. 684. Temporary and obsolete.

L. 1897, ch. 261.—The Salt Springs Law was re-enacted, with new matter, by L. 1898, ch. 27. The re-enactment amended the last sentence in § 31 of statute affected making the line "for the manufacture and preservation of good air" read "for the manufacture and preservation of good salt." The re-enactment also amended § 37 of statute affected by adding new matter. The re-enactment also amended § 38 of statute affected by changing the date in the last sentence from "first day of April, 1898," to "first day of January, 1899." L. 1898, ch. 27, § 41, repeals all acts or parts of acts inconsistent with or repugnant to the provisions thereof.

L. 1898, ch. 27.—This statute, which is the "old" Salt Springs Law, is recommended for repeal because its live provisions have been incorporated in the Salt Springs Law. Section 27 was amended so as to read as follows.

L. 1900, ch. 385.—Statute affected is consolidated in Salt Springs Law, § 27.

SALT WELLS.

Contamination; Penal Law, § 1758. See Salt Springs Law.

SALT WORKS.

Injury to Onondaga; Penal Law, § 2170. See Salt Springs Law.

SALVATION ARMY

L. 1899, ch. 468.—"An act to provide for the incorporation of the Salvation Army."

§ 1. Filing and recording certificate of incorporation.—The Salvation Army in the United States may become incorporated as a religious and charitable organization by the commander, the chief secretary and the treasurer of the Salvation Army in the United States, together with two other officers or laymen, members of the said Salvation Army, executing, acknowledging and filing a certificate of incorporation in the office of the secretary of state, giving its corporate name, the location of the headquarters of said association in the United States, the names of the incorporators, the amount and kind of property owned by said corporation in the United States, the states or territories of the United States wherein it is to operate, and its general objects and purposes. The Salvation Army incorporated under the provisions of this act shall have power to take by gift, lease, purchase, devise or bequest, real and personal property and hold the same for the proper uses and purposes of said corporation.

§ 2. Government and officers of the Salvation Army.—The commander, the chief secretary, and the treasurer of the Salvation Army in the United States and the two officers of said army or two laymen members of said army selected by the three first mentioned officers, or by a majority of

them, shall be trustees of said corporation, and such officers and such laymen trustees shall together constitute the board of trustees thereof. The three first-mentioned officers of said corporation shall be trustees thereof ex officio during their term of office, and shall cease to be trustees thereof upon their removal or resignation. The commander, the chief secretary and the treasurer of the Salvation Army in the United States shall be appointed by the general for the time being of the Salvation Army, and shall be subject to removal from office by him. The two other officers or laymen, members of such corporation, signing the certificate of incorporation shall be the two laymen trustees thereof during the first year of its corporate existence. The term of office of the two last-mentioned trustees shall be one year, and they may be removed from office by the vote of the three first-mentioned officers or a majority of them. Whenever the office of any such layman trustee shall become vacant by expiration of term of office or otherwise, his successor shall be appointed from the officers or members of the Salvation Army by the three first-named officers, or a majority of them. No act or proceeding of the trustees of the Salvation Army shall be valid without the vote of a majority of the trustees of said corporation.

§ 3. Property of the Salvation Army transferred by its incorporation.—All the temporalities and property, real and personal, of any nature or kind, of the association known as the Salvation Army held in the United States by Frederick de Lautour Booth-Tucker, individually or as commander of the Salvation Army, or by any other officer or member of the said Salvation Army, or by any person, in trust for the purposes and benefit of the religious society or body heretofore known as the Salvation Army, shall, on the incorporation thereof, as provided for by this act, become the temporalities and property of such corporation, whether such temporalities or property be given, granted or devised directly to such unincorporated society or association, or to any person for the use or benefit thereof.

§ 4. General powers and duties of the trustees of the Salvation Army.—The trustees of the Salvation Army, incorporated under the provisions of this act, shall have the custody and control of all the temporalities and property, real and personal, belonging to said corporation in the United States, and the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the Salvation Army or the governing body thereof and the provisions of law relating thereto. The board of trustees of said corporation shall have power to adopt by-laws for the calling and conduct of the meetings of its members, the government and regulation of said corporation, the management of its property, and the regulation of its affairs. But this section does not give to said trustees any control over the polity or control of the religious or ecclesiastical membership of the Salvation Army, or power to dismiss or remove

any of its officers or members, or power over any of the spiritual officers of said association, who shall be subject to the rules and discipline of said association laid down by the general of the Salvation Army or his successor in said office.

§ 5. **Establishment of homes, hospitals, shelters, et cetera.**—Said corporation shall have power to establish and maintain, as a part of its regular church or charitable work, places for religious meetings, homes for the training of its officers, lodging shelters for the poor, and, subject to the written approval of the state board of charities, when established in the state of New York, places of rest and recuperation for the sick and convalescent, homes for the rescue of fallen women, hospitals, children's homes, and homes for the aged poor of its membership or congregation, or of the public generally; and may take and hold by conveyance, donation, bequest or devise, real and personal property for such purposes, and may purchase or erect suitable buildings therefor, and may take and hold by grant, donation, bequest or devise, real or personal property upon trust, to apply the same or the income thereof, under the direction of its trustees, or other officers, for the purpose of establishing, maintaining and managing any one or more of the homes or institutions mentioned in this section.

§ 6. **Establishment of farm colonies.**—Said corporation shall have power to establish farm colonies in any of the states or territories of the United States for the purpose of enabling the working classes in the great cities of the United States who desire to own their own homes, and other persons who have no homes of their own, to acquire homesteads and become self-supporting by tilling the soil; and may purchase or acquire, by deed, devise, gift or otherwise, real and personal property, or receive property in trust, for such purpose, in any of the states or territories of the United States, and may purchase and erect suitable buildings therefor; may advance money to such colonists to enable them to become self-supporting, and shall have such further powers as are requisite to carry out the general objects in this section specified; and may borrow money and issue bonds for the same, secured by mortgage on said Salvation Army colonization farms, but no such bonds shall be issued without the unanimous vote of the five trustees of said corporation.

§ 7. **Sale and mortgage of the real property of the Salvation Army.**—The Salvation Army, incorporated under the provisions of this act, shall not sell or mortgage any of its real property without applying for and obtaining leave of the court therefor pursuant to the provisions of the code of civil procedure.

§ 8. **Business to be conducted by the Salvation Army in furtherance of its charitable work.**—The Salvation Army shall have power, in furtherance of its religious, charitable, missionary and educational work, to own and conduct a printing and publishing business, the business of manufac-

turing or buying and selling musical instruments, the business of manufacturing or buying and selling uniforms and badges for the use of the officers and soldiers of the Salvation Army, and shall have power to manufacture, buy or sell any of the articles, goods and appliances required by the Salvation Army; provided, however, that no officer, member or employee of said corporation shall receive, or may be lawfully entitled to receive, any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; and provided, furthermore, that all the proceeds of said business shall be devoted to the religious, charitable, educational or missionary purposes of the Salvation Army.

§ 9. **Correction and confirmation of conveyances to the Salvation Army.**—The Salvation Army, incorporated under the provisions of this act, shall be deemed a religious corporation within the meaning and intent of the provisions of section ten of the religious corporations law.

§ 10. **Making and filing of an annual report.**—Said Salvation Army shall, within thirty days from the twentieth day of January in each year, make and file in the office of the secretary of state an inventory of its property wherever situated in the United States, naming the amount and kind thereof in each state and territory, and the amount and kind of its indebtedness, and whether the same is secured or unsecured; also a list of the trustees of said corporation and a statement as to the number of farm colonies established by said corporation, and the amount of land purchased and sold in each of said colonies during the preceding year, and a statement of the receipts and expenditures from any of the homes, shelters and hospitals established and conducted by said corporation in pursuance of the terms of this act; and also a statement of the receipts and disbursements of any business authorized by this act to be conducted by said corporation.

§ 11. **Exemption from taxation.**—The property of the Salvation Army, both real and personal, within this state, shall be exempt from taxation, to the extent that, and so long as, the same shall be used exclusively for places for religious meetings, homes for the training of its officers, homes for the rescue of fallen women, shelters for the poor, hospitals, places of rest and recuperation for the sick and convalescent, children's homes and homes for the aged poor of its membership or congregation or of the public generally. All the other property of said Salvation Army, both real and personal, in this state, shall be entitled to the exemptions from taxation provided for by subdivision seven of section four of the tax law.

L. 1899, ch. 482.—“An act to exempt the real estate held in trust for the religious and charitable purposes of the Salvation Army from taxation.”

Exemption of property of Salvation Army.—§ 1. The real estate in the

§§ 1, 2.

Appropriation for Saratoga Reservation.

L. 1915, ch. 335.

state of New York heretofore held by Frederick de Latour Booth-Tucker in trust exclusively for the religious and charitable purposes of the Salvation Army and transferred by him to the Salvation Army incorporated in this state as a religious and charitable corporation, is hereby declared to be exempt from any and all taxes and assessments heretofore imposed, assessed or levied while so held or owned; and the officer, officers and official bodies having charge of such taxes and assessments are hereby required and directed to cancel and discharge any and all of such taxes and assessments from the records of any department wherein they now or hereafter may exist.

SANITARY CODE.

Adoption, etc.; Public Health Law, § 2-b.

SANITARY DISTRICTS.

Establishment; Drainage Law, §§ 100-110.

SARATOGA MONUMENT.

See Monuments.

SARATOGA SPRINGS.

L. 1915, ch. 335.—An act to appropriate moneys for the objects and purposes of the commissioners of the state reservation at Saratoga Springs.

Section 1. The sum of ninety-nine thousand dollars (\$99,000), or so much thereof as may be needed, is hereby appropriated, in addition to all appropriations for the same purpose heretofore made, to restore to the funds appropriated to the board hereinafter named the amounts that have been and will be disbursed therefrom for interest on the value of property taken for the reservation and for expenses incidental to the acquisition of said property by the state and for the purchase of such lands and rights, easements and interests in lands by the board of commissioners of the state reservation at Saratoga Springs as the said board shall deem proper and necessary to be taken for the use and development of said reservation for the purpose of preserving the natural mineral springs in the town of Saratoga Springs and adjoining towns, and springs yielding other potable waters upon the state reservation at Saratoga Springs, and of utilizing the waters of all such springs and of restoring such springs to their former natural condition and protecting them from depletion or impairment, including the cost of preliminary surveys of the lands taken and the lands in which easements are or may be taken and the expenses of the examination and certification of title and other expenses incident to the acquisition of title by the state and the payment of any judgments that may be recovered therefor in the board of claims.

§ 2. The state comptroller, upon the written request of said board of commissioners is hereby authorized and directed to borrow, at any time after the first day of March, 1915, the said sum of ninety-nine thousand dollars (\$99,000) for the purposes specified in this act and to issue bonds

Cross-references.

or certificates of the state therefor, payable within ten years from their date, bearing interest at a rate of not exceeding five per centum per annum, and which shall not be sold at less than par. The sum hereby appropriated shall be payable on the order of such board by the treasurer on the warrant of the comptroller, with the written approval of the governor, only out of the moneys realized from the sale of such bonds or certificates.

L. 1909, ch. 569.—“An act to authorize the selection, location and appropriation of certain lands in the town of Saratoga Springs, for a state reservation, and to preserve the natural mineral springs therein located, and making an appropriation therefor, and authorizing an issue of bonds to pay such appropriation.”

Sections 1-5, as amended by L. 1911, ch. 394 and L. 1914, ch. 252, repealed by L. 1916, ch. 295. State Reservation transferred to jurisdiction of conservation commission, Conservation Law, §§ 2, 600-606.

SAVINGS AND LOAN ASSOCIATIONS.

Law revised; Banking Law, §§ 375 ff.

SAVINGS BANKS.

Banking Law, §§ 230-281.

SCHENECTADY.

L. 1916, ch. 603.—An act to create a commission to investigate and report upon the conditions relative to the construction of a highway bridge over the Mohawk river and the Barge canal between the city of Schenectady and the village of Scotia and making an appropriation therefor.

Omitted as temporary.

SCHOOLS.

The Consolidated School Law (L. 1894, ch. 556) was repealed by the Education Law and re-enacted as a part of that chapter of the Consolidated Laws. See Education Law.

SCHOHARIE COUNTY.

Boundary; See County Boundaries.

SCHUYLER MANSION.

See Public Buildings Law, §§ 70-72.

SEARCH WARRANT.

Defined; Code Crim. Pro. § 791. Grounds for issuance, form, execution, etc.; Code Crim. Pro. §§ 792-813. Maliciously procuring; Penal Law, § 1786. Misconduct in executing; Penal Law, § 1847.

SECOND CLASS CITIES.

Standard of gas in; General Business Law, §§ 320-323.

SECOND CLASS CITIES LAW

The housing law for cities of the second class, being L. 1913, ch. 774, was repealed by L. 1915, ch. 32. The law was held unconstitutional in *People ex rel. Lankton v. Roberts* (1915), 90 Misc. 439, 153 N. Y. Supp. 143.

L. 1909, ch. 55.—“An act in relation to cities of the second class, constituting chapter fifty-three of the Consolidated Laws.”
[In effect February 17, 1909.]

CHAPTER LIII OF THE CONSOLIDATED LAWS.**SECOND CLASS CITIES LAW.**

- Article 1. Short title; definitions (§§ 1, 2).
 2. General provisions (§§ 3, 4).
 3. Officers (§§ 10–23).
 4. Common council (§§ 30–44).
 5. Mayor (§§ 50–57).
 6. Department of finance (§§ 60–81).
 7. Department of public works (§§ 90–103).
 8. Department of contract and supply (§§ 120–125).
 9. Department of public safety (§§ 130–154).
 10. Department of assessment and taxation (§§ 160–167).
 11. Department of charities (§§ 170–174).
 12. Judiciary (§§ 180–191).
 13. Department of law (§§ 200–206).
 14. Supervisors; sealer of weights and measures (§§ 210, 211).
 15. Licensing of dogs (§§ 220–232; repealed, except § 230).
 16. Miscellaneous provisions (§§ 240–245).
 17. Construction; saving clause; repeal (§§ 250–253).

ARTICLE I.**SHORT TITLE; DEFINITIONS.**

- Section 1. Short title.
 2. Term city defined.

§ 1. Short Title.—This chapter shall be known as the “Second Class Cities Law.”

Source.—Second Class Cities L. (L. 1906, ch. 473) § 1.

Second class cities defined, Constitution, Art. 12, § 2. The first second class cities charter was enacted as L. 1898, ch. 182; this act was amended from time to time and entirely revised by L. 1906, ch. 473.

L. 1909, ch. 55.

General provisions.

§§ 2, 3.

References.—Classification of cities as to population, Constitution, Art. 12, § 2. Provisions applicable to cities generally, see General City Law. Home rule for cities, General City Law, §§ 19–24. Hearings on city bills, Id. §§ 30–34. Issuance and sale of municipal bonds, General Municipal Law, §§ 7–12. City planning commission, Id. §§ 234–239-a. Playgrounds and recreation centers, Id. §§ 240–246. For provisions generally applicable to cities and other municipalities see General Municipal Law. Boards of education in cities, Education Law, §§ 865–881. School elections in cities, Id. §§ 208–218.

For laws on special subjects affecting cities, see title **CITIES**, Vol. I, p. 1029, including three platoons for police force in cities of first and second class, L. 1911, ch. 360 (Vol. I, p. 1029); cancellation of surety bonds, L. 1911, ch. 833 (Vol. I, p. 1031); repayment of surplus of deposits for pavements, L. 1913, ch. 788 (Vol. I, p. 1031); optional city government law, L. 1914, ch. 444 (Vol. I, p. 1032).

As to local option for trafficking in liquors in all cities, see City Local Option Law, L. 1917, ch. 624 (Vol. I, p. 1057).

§ 2. **Term city defined.**—The term “city,” when used in this chapter, means a city of the second class.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 2, in part.

ARTICLE II.

GENERAL PROVISIONS.

Section 3. Corporate powers.

4. Application of chapter.

§ 3. **Corporate powers.**—The citizens of the state of New York, from time to time inhabitants of the territory comprised within the boundaries of the city, shall continue to be a municipal corporation in perpetuity under its corporate name, and the same shall in that name be a body politic and corporate in fact and in law, with power of perpetual succession. The city shall have power:

1. To take, purchase, hold, lease, sell and convey such real and personal property as the purposes of the corporation may require.

2. To take by gift, grant, bequest and devise and hold real and personal estate absolutely or in trust for any public use including that of education, art, ornament, health, charity or amusement, for parks or gardens, or for the use or erection of statues, monuments, buildings or structures, upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said corporation and to provide for the proper administration of the same.

3. To make, have and use, and from time to time alter, a common seal.

4. To contract and be contracted with, to sue and be sued, to complain and defend and to institute, prosecute, maintain and defend any action or proceeding in any court.

5. To have and exercise all of the rights, privileges and jurisdiction essential to a proper exercise of its corporate functions, including all that

may be necessary incident to, or may be fairly implied from, the powers specifically conferred upon such corporation.

6. To have and exercise all the rights, privileges, functions and powers now prescribed and exercised by it under existing or subsequent laws and not inconsistent with the provisions of this chapter.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 3.

Acquisition of lands.—Lands acquired by the city of Utica on a sale for a failure to pay local taxes and assessments are subject to taxation by the county. Hence, where said city having bid in the lands, fails to protect its title by paying county taxes, the purchaser at the county tax sale obtains a title superior to that of the city. *Pickell v. City of Utica* (1914), 161 App. Div. 1, 146 N. Y. Supp. 31, *affd.* (1915), 216 N. Y. 740, 111 N. E. 1098.

§ 4. Application of chapter.—Within thirty days after each state enumeration, the secretary of state shall file with the clerk of every city, a certificate showing the population of such city; and if it appears therefrom that such city has, since the prior state enumeration, become a city of the second class, then all the provisions of this chapter shall apply to such city on and after the first day of January thereafter, but the provisions of this chapter shall not apply to any city that becomes a city of the second class under the enumeration had in the year nineteen hundred and five, until on and after the first day of January, nineteen hundred and eight, except that the elective officers provided in this chapter or otherwise by law for such city as becomes a city of the second class after such enumeration, shall be elected at the city election to be held on the Tuesday succeeding the first Monday in November, nineteen hundred and seven.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 4.

Section cited.—*Hamlin v. Bender* (1915), 92 Misc. 16, 29, 155 N. Y. Supp. 963, *affd.* (1916), 173 App. Div. 996, 159 N. Y. Supp. 1117; *Wear v. Truitt* (1916), 173 App. Div. 344, 345, 158 N. Y. Supp. 790.

ARTICLE III.

OFFICERS.

Section 10. Officers.

11. Elective officers.
12. Appointive officers.
13. Terms of office.
14. Elections.
15. Vacancies.
16. Salaries.
17. Additional fees or compensation not to be paid.
18. Official undertakings.
19. Restrictions; officers not to be interested in contracts.
20. Charges against city officers.
21. Office hours.
22. Officers, trustees of public property.
23. Annual reports of departments.

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§ 10. **Officers.**—City officers, within the meaning of this chapter, include all persons elected or appointed to any office of the city created or authorized by this chapter or otherwise by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 10.

§ 11. **Elective officers.**—There shall be elected by the qualified electors of the city, a mayor, comptroller, treasurer, president of the common council and four assessors. There shall be elected by the qualified electors of each ward of the city an alderman and a supervisor. There shall also be elected by the qualified electors of the city and of the wards thereof such other officers as may be provided by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 11.

§ 12. **Appointive officers.**—There shall be appointed by the mayor a corporation counsel, city engineer, commissioner of public works, commissioner of public safety, commissioner of charities and sealer of weights and measures. Other officers may be appointed as provided in this chapter or otherwise by law. All appointments to any city office shall be evidenced by a certificate in writing, signed by the appointing officer and filed forthwith in the office of the city clerk. If an appointment be made by the common council such certificate shall be signed by the officer presiding at the time the appointment was made and attested by the city clerk.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 12.

§ 13. **Terms of office.**—The term of office of each elective officer, unless elected to fill a vacancy then existing, shall commence on the first day of January next succeeding his election. The term of office of each appointive officer shall commence on the day succeeding his appointment unless a different date is specified in the certificate of appointment. The term of office of the mayor, comptroller, treasurer and president of the common council shall be two years. The term of office of alderman and supervisor shall be two years. The term of office of the assessors shall be four years, except that at the city election first held in the city after the same shall have become a city of the second class and the provisions of this chapter relating to the election of its officers shall have become applicable thereto, two of the assessors shall be elected for a term of two years and two for a term of four years. The term of office of the corporation counsel, city engineer, commissioner of public works, commissioner of charities and sealer of weights and measures shall be two years, unless sooner removed by the mayor. Where the term of office of an appointive officer is not specifically fixed by statute it shall be deemed to continue only during the pleasure of the officer, officers, board or body authorized to make the appointment.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 13.

References.—Holding over after expiration of term, Public Officers Law, § 5.

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Terms of office generally, *Id.* § 4. Constitutional provision that if term of office is not declared by statute, such office may be held during pleasure of authority making the appointment, Constitution, Art. 10, § 3.

Review of determination.—The removal of a school commissioner of the city of Troy by the mayor "for the good of the department of public instruction of the city of Troy," without charges or a hearing or any proceeding of a judicial nature, cannot be reviewed by a writ of certiorari. The office of this writ is confined to the review of judicial proceedings of inferior bodies. The arbitrary removal of a public officer under a power conferred by statute is not a judicial proceeding. *People ex rel. Howe v. Conway* (1901), 59 App. Div. 329, 69 N. Y. Supp. 837.

§ 14. Elections.—All elections of city officers, including supervisors and judicial officers of a city court or inferior local court, shall be held on the Tuesday succeeding the first Monday in November, and, except to fill vacancies, in an odd-numbered year. All such elections shall be held at the same time and places as the general election held in such year, and shall be conducted in all respects in the same manner as general elections in cities are required to be conducted, and all the provisions of law relative to such elections shall be applicable to the election for officers of the city. In case of the failure to elect an elective city officer, except as otherwise provided herein, the office shall be deemed to be vacant for the purpose of choosing a successor and the vacancy shall be filled in the manner provided herein for the filling of a vacancy in such office happening otherwise than by expiration of term.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 14.

Reference.—Election of city officers to be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, Constitution, Art. 12, § 3.

Power of Governor to call special election for supervisor.—The Governor is authorized in his discretion, under the provisions of section 292 of the Election Law, to proclaim a special election to fill the office of supervisor in wards of cities of the second class, where there has been a tie vote. The provision for appointment by the Mayor in case of a failure to elect does not, in view of the provisions of section 292 of the Election Law itself furnish an obstacle to the Governor's power to call a special election. *Atty. Genl. Opin.* (1915), 6 State Dep. Rep. 416.

§ 15. Vacancies.—If a vacancy shall occur, otherwise than by expiration of term, in an elective office of the city, including that of supervisor, the mayor shall appoint a person to fill such vacancy. The person so appointed to such vacancy, if the office be not made elective by the constitution, shall hold office for the balance of the unexpired term. If the office be made elective by the constitution, the term of office of the person so appointed shall be until the commencement of the political year next succeeding the first annual election after the happening of the vacancy at which a successor can be elected, and a successor for the balance of the unexpired term, if any, shall be chosen at the next city election happening not less than twenty days after such vacancy occurs. If a vacancy shall occur in an appointive office of the city, otherwise than by expiration of term, the office, officers, board or body authorized to make

appointment to office for the full term shall appoint a person to fill such vacancy for the balance of the unexpired term.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 15.

Reference.—What constitutes vacancy. See Public Officers Law, § 30.

§ 16. **Salaries.**—In a city having a population of less than seventy-five thousand, as appears by the last preceding state enumeration, the mayor shall receive an annual salary of three thousand five hundred dollars, the comptroller three thousand dollars, the treasurer two thousand five hundred dollars, the corporation counsel three thousand five hundred dollars, the city engineer three thousand dollars, the president of the common council one thousand dollars, and each alderman five hundred dollars. In a city having a population of seventy-five thousand and less than one hundred and fifty thousand as aforesaid, the mayor shall receive an annual salary of four thousand dollars, the comptroller three thousand five hundred dollars, the treasurer three thousand dollars, the corporation counsel four thousand dollars, the city engineer three thousand five hundred dollars, the president of the common council one thousand dollars, and each alderman the salary provided by the laws in force at the time of the taking effect of this chapter, except in the city of Yonkers, where the salaries of the president of the common council, and members of the board of aldermen, shall be fixed by the board of estimate and apportionment. In a city having a population of one hundred and fifty thousand or more, as aforesaid, the mayor shall receive an annual salary of five thousand dollars, the comptroller three thousand five hundred dollars, the treasurer three thousand five hundred dollars, the corporation counsel five thousand dollars, the city engineer four thousand five hundred dollars, the president of the common council one thousand dollars, and each alderman seven hundred and fifty dollars. Supervisors shall receive such salary or compensation as shall be otherwise provided by law. The salary of every city officer and the salary or compensation of every person paid out of funds appropriated by the city, when not specifically fixed by statute, shall be fixed and determined by the board of estimate and apportionment. The board of estimate and apportionment may, by resolution adopted by a vote of four-fifths of all its members, fix and determine the salary of the corporation counsel, and of the city engineer at a sum greater or less than herein prescribed, but no such increase or decrease in the salary of either of them shall be in effect until the common council shall have approved the same. No member of the board of estimate and apportionment shall have a vote upon a resolution fixing his own salary, but when such vote is taken the city treasurer shall temporarily take the place of the member whose salary is to be fixed, but for the purpose of voting upon such resolution alone. All such salaries and compensation shall be payable in such installments and at such times as such board shall determine. (*Amended by L. 1915, ch. 395.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 16, as amended by L. 1908, ch. 141.

Salary of deputy comptroller; power of common council.—The power of the board of estimate and apportionment to fix the salary of a deputy comptroller under this section, is absolute, and no authority is conferred upon the common council by § 96 of the second class city charter (§ 75 of present law) requiring the submission of the estimate to it, and providing that the common council after a hearing may reject or adopt any "item" therein, since such power is limited to items which are estimated and does not include those which are fixed by or under any other positive provision of statute. *Pryor v. City of Rochester* (1901), 166 N. Y. 548, 60 N. E. 252, modf. (1901), 57 App. Div. 486, 68 N. Y. Supp. 86.

Salary of commissioner of public works.—The board of estimate and apportionment may fix absolutely the salary of the commissioner of public works, and the common council is not authorized to reduce it. An agreement between the commissioner and mayor by which the commissioner agreed to accept the salary as fixed by the common council will not preclude the commissioner from recovering from the city the difference between the salary as fixed by the board of estimate and apportionment, and that as fixed by the common council, nor will such right be affected by his including in his statement of the amount which should be appropriated for his department, the amount of his salary as fixed by the common council, nor by the further fact that he accepted monthly from the city treasurer a check for his salary at the reduced rate which stated on its face that it was in full for his salary for the month. *Grant v. City of Rochester* (1903), 79 App. Div. 460, 80 N. Y. Supp. 522, *affd.* (1903), 175 N. Y. 473, 67 N. E. 1083.

§ 17. Additional fees or compensation not to be paid.—No officer of the city, except corporation counsel, a justice of a city court, acting as clerk of said court, city marshal, marshal of a city or municipal court, commissioners of deeds and city officers acting as commissioners of deeds, shall have or receive to his use any perquisites, compensation or fees for services pertaining directly or indirectly, or which may hereafter be added to the duties of his office, in addition to his salary; and all perquisites, compensation and fees paid to and received by any such officer for services pertaining directly or indirectly, or which may hereafter be added to the duties of his office, other than his salary received from the city, shall be the property of the city, and shall be paid by the officer receiving the same into the city treasury. The compensation of all the officers, clerks and subordinates in the several departments shall not exceed in the aggregate the appropriation made by the board of estimate and apportionment for that purpose.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 17.

References.—Taking unlawful fee or fees for services not rendered, Penal Law, §§ 1826, 1830.

Additional compensation to city treasurer.—The right of the city treasurer of Rochester to compensation under ch. 603 of the Laws of 1892, relating to the construction of a sewer in such city, is not affected by this section. *People ex rel. Williams v. County Court* (1905), 105 App. Div. 1, 93 N. Y. Supp. 452.

City clerk not entitled to retain hunting license fees.—The duties of a city clerk as prescribed by section 104 of the Forest, Fish and Game Law (now Conservation Law, § 185) in relation to the issuance of hunting licenses and the collection of fees therefor are not disconnected from and foreign to the functions of the municipal

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government and the duty imposed upon him partakes of a distinctly municipal character. And for a clerk of a city of the second class to retain such fees would be in violation of this section. *Matter of Bernardi* (1909), 133 App. Div. 510, 117 N. Y. Supp. 727.

§ 18. Official undertakings.—No person elected or appointed to a city office shall enter upon or continue in the discharge of the duties of his office until he shall have executed and filed with the city clerk the official undertaking, if any, required to be given and the same shall have been approved as to its form and validity by the corporation counsel and as to the sufficiency of the sureties by the mayor. All such undertakings shall be recorded in the office of the city clerk. In addition to the city officers required in this chapter, or otherwise by law, to give official undertakings, the common council may require any other city officer to give an official undertaking in such penal sum with such conditions and sureties as it shall direct and approve. It may also, in a proper case, require an undertaking of any officer in addition to that required by law. The mayor shall examine the sufficiency of the proposed sureties of any officer or person from whom an official undertaking is required and may require such sureties to be examined on oath as to their property qualifications and liabilities. The deposition of each surety shall be reduced to writing, subscribed by him, certified by the officer administering the oath and annexed to and filed with the undertaking. In case any city officer shall fail to file the required official undertaking, if an elective officer, within thirty days after receipt of his certificate of election, and if an appointive officer, within fifteen days after receipt of notice of his appointment, the office shall be deemed to be vacant and the vacancy shall be filled in the manner herein provided for the filling of a vacancy therein happening otherwise than by expiration of term. The official undertaking of a city officer shall not be a lien upon real estate owned by him or the sureties on such undertaking.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 18.

References.—Official bonds generally, Public Officers Law, §§ 11-13; failure to file, Penal Law, §§ 1820, 1821; Public Officers Law, § 15.

§ 19. Restrictions; officers not to be interested in contracts.—No person shall, at the same time, hold more than one city office. Upon the acceptance by a city officer of a second office the office first held by him shall thereupon become vacant. No member of the common council or other officer or employee of the city, or person receiving a salary or compensation from funds appropriated by the city, shall be interested directly or indirectly in any contract to which the city is a party, either as principal, surety or otherwise; nor shall any such member of the common council, city officer or employee or person, or his partner, or any agent, servant, or employee of such officer, employee or person or of the firm of which he is a partner, purchase from or sell to the city, or any officer thereof, any real or personal property for the use of the city, or any board or officer

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thereof, nor shall he be interested, directly or indirectly, in any work to be performed for, or services rendered to or for it, or in any sale to or from said city, or to any officer, board or person in its behalf. Any contract made in violation of any of these provisions shall be void. A person shall not be deemed to be interested in a contract, purchase or sale made by a corporation with, from or to the city solely by reason of the fact that he is a stockholder or director of such corporation. The term "city officer" as used herein, however, shall not be deemed to include a commissioner of deeds. (*Amended by L. 1916, ch. 380.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 19.

References.—See General City Law, § 3; violation, a misdemeanor, Penal Law, § 1868; for liability of city on unlawful contracts, see cases cited under Village Law, § 333.

§ 20. Charges against city officers.—Whenever it is provided herein, or otherwise by law, that an officer of the city shall hold office during good behavior or shall be removed only upon charges, such charges shall be for disability for service or neglect or dereliction of official duty or incompetency or incapacity to perform his official duties or some delinquency materially affecting his general character or fitness for the office, unless otherwise specifically provided by law. Where the charges are for disability for service, the examination shall be one of inquiry only and the decision made in a proper case, may be for honorable discharge from service. In all other cases the examination shall be a trial, conducted under such reasonable rules and regulations as shall be prescribed by the officer, officers, board or body before whom the trial is held.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 20.

§ 21. Office hours.—Unless otherwise provided by law, the city offices shall be kept open for the transaction of business each day in the year, Sundays and legal holidays excepted, from ten o'clock in the forenoon until four o'clock in the afternoon, except that the offices of comptroller, city treasurer and the office for the collection of water rents, shall be kept open as aforesaid from ten o'clock in the forenoon until three o'clock in the afternoon. The common council may from time to time direct any city office to be kept open at such hours as public convenience may require.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 21.

§ 22. Officers, trustees of public property.—The common council and the several members thereof, and all officers and employees of the city are hereby declared trustees of the property, funds and effects of said city respectively, so far as such property, funds and effects are or may be committed to their management or control, and every taxpayer residing in said city is hereby declared to be a cestui que trust in respect to the said property, funds and effects respectively; and any co-trustee or any cestui que trust shall be entitled as against said trustees and in regard to said prop-

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erty, funds and effects to all the rules, remedies and privileges provided by law for any co-trustee or cestui que trust; to prosecute and maintain an action to prevent waste and injury to any property, funds and estate held in trust; and such trustees are hereby made subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by the city or by any co-trustee or cestui que trust aforesaid. The remedies herein provided shall be in addition to those now provided by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 22.

§ 23. **Annual reports of departments.**—The several heads of departments shall present to the mayor annually, on or before the first Monday of December, a report of their proceedings during the preceding year. The mayor shall transmit the same to the common council with any recommendation he may think proper to make, but nothing in this section contained shall be construed to relieve such heads of departments from furnishing such other information as may be required by the mayor at any time.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 23.

ARTICLE IV.

COMMON COUNCIL.

- Section 30. **Legislative power.**
31. **Members; president; organization of council.**
 32. **City clerk.**
 33. **Meetings.**
 34. **Powers.**
 35. **Legislative acts.**
 36. **Appropriations.**
 37. **Disposition of real estate; franchises.**
 38. **Procedure after passage of ordinance.**
 39. **Record of ordinances.**
 40. **Regulations of duties of officers.**
 41. **Executive functions; how performed.**
 42. **Penalties for violation of ordinances.**
 43. **Designation of official papers; official printing.**
 44. **Penalties.**

§ 30. **Legislative power.**—The legislative power of the city is vested in the common council thereof, and it has authority to enact ordinances, not inconsistent with law, for the government of the city and the management of its business, for the preservation of good order, peace and health, for the safety and welfare of its inhabitants and the protection and security of their property; and its authority, except as otherwise provided in this chapter, or by law, is legislative only.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 30.

Validity of ordinances.—The common council of a city is, pursuant to this section, the judge as to what ordinances it will pass for the safety and welfare of the inhabitants of the city and the protection and security of their property, and unless an ordinance passed by it is wholly arbitrary and unreasonable it should be upheld. The necessity and advisability of the ordinance is for the legislative power to determine. The presumption is in favor of the ordinance. *Smoke ordinance in the city of Rochester held not to be unreasonable upon its face or as a matter of law. City of Rochester v. Macauley-Fieu M. Co. (1910), 199 N. Y. 207, 92 N. E. 641, 32 L. R. A. (N. S.) 554, affg. (1909), 130 App. Div. 207, 114 N. Y. Supp. 505.*

Enactment of ordinance in conflict with an order of the Public Service Commission. *City of Troy v. United Traction Co. (1911), 202 N. Y. 333, 95 N. E. 759.*

Ordinance of common council providing that certain questions of public policy be submitted to the electors at a general election examined and held, to be *ultra vires* and invalid. *Mills v. Sweeney (1916), 219 N. Y. 213, 114 N. E. 65.*

Power to make traffic regulations is vested exclusively in the common council. Hence, such regulations adopted by the commissioner of public safety are inadmissible in evidence. *Harding v. Cavanaugh (1915), 91 Misc. 511, 155 N. Y. Supp. 374.*

A common council elected subsequent to the taking effect of the provisions of this law in a city of the second class may reconsider and act upon unfinished business of the former council. *People ex rel. Holtzmann v. City of Schenectady (1909), 136 App. Div. 127, 120 N. Y. Supp. 621.*

§ 31. Members; president; organization of council.—The aldermen of the city shall constitute the common council thereof. The members of the common council shall meet in the room provided for the purpose on the second day of January after their election, or if that be Sunday, then on the next day, and organize. The president shall preside at all meetings and discharge such other duties as may be defined by ordinance of the common council and otherwise by law. The common council may at any regular meeting, elect one of its members president pro tempore to act during the temporary absence or disability of the president and who shall be the president of the common council in case of a permanent vacancy in that office. Until such permanent vacancy shall be filled, the mayor shall preside over the meetings of the common council. Until such a vacancy is filled the common council shall transact no business except to adjourn from time to time. The president may vote like other members of the common council upon all resolutions and ordinances submitted to the body for its action in case of a tie vote, and when a member of the common council is elected president, he shall be entitled to vote as a member of the common council. The president of the common council shall have the power of commissioner of deeds.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 31.

The president of the common council has not the same right to vote as an alderman upon the questions coming before the common council for its action. His right to vote "like other members" is expressly limited to resolutions and ordinances submitted, and then only "in case of a tie vote." *People ex rel. Argus Co. v. Bresler (1902), 171 N. Y. 302, 63 N. E. 1093, affg. (1902), 70 App. Div. 294, 75 N. Y. Supp. 209.*

§ 32. **City clerk.**—The common council shall choose a clerk to hold office during the term for which its members were elected, unless sooner removed by a vote of three-fourths of all the members of the common council. He shall be the city clerk and shall attend the meetings of the common council, keep a journal of its proceedings and discharge such other duties as may be prescribed by law or ordinance. He may appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of the absence or disability of the city clerk or a vacancy in the office, the deputy shall discharge the duties of the office until the city clerk returns, his disability ceases or the vacancy is filled. It shall be the duty of the said clerk to transmit to the head of each department and the clerk of each board, copies of all ordinances in any manner affecting any of the matters of which any such department or board shall have jurisdiction. He shall have the custody of the city seal. Said clerk and deputy clerk shall each have the power of a commissioner of deeds.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 32.

City clerk has no relation to the board of contract and supply, and a petition which should have been served upon said board is not properly served by leaving the same with him. *Brodt v. City of Yonkers* (1916), 175 App. Div. 455, 161 N. Y. Supp. 1023.

The city clerk is a creature of the common council, charged to attend its meetings, to keep its journal and to perform certain other duties and such as may be prescribed by law or ordinance. *Brodt v. City of Yonkers* (1916), 175 App. Div. 455, 457, 161 N. Y. Supp. 1023.

Section cited.—*Matter of Bernardi* (1909), 133 App. Div. 510, 117 N. Y. Supp. 727.

§ 33. **Meetings.**—The common council shall hold regular meetings at times to be determined by it from time to time. The president of the common council, or a majority of its members, may call a special meeting of the common council by causing a written notice thereof, specifying the objects of the meeting, to be served by the city clerk upon each member personally or by mail, directed to his place of residence or place of business, at least twenty-four hours before the time fixed for such meeting.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 33.

§ 34. **Powers.**—The common council shall determine the rules of its own proceedings and be the judge of the election, returns and qualifications of its members. Its meetings shall be public and its records open to public inspection, and a majority of all its members shall constitute a quorum to do business. The common council may compel the attendance of absent members at any meeting properly called, and may punish or expel a member for disorderly conduct, for a violation of its rules or for official misconduct, or declare his seat vacant by reason of absence, provided such absence has continued for the space of two months; but no expulsion shall take place and no vacancy on account of absence be declared except by the vote of three-fourths of all the members of the common

council, nor until the delinquent member has had an opportunity to be heard in his defense. All appointments or designations made by the common council shall be determined upon a vote taken by a roll call of its members, and a statement of the choice of each member or the yeas and nays, if any, shall be entered upon the journal.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 34.

Viva voce vote.—The provisions of this section requiring that "all appointments or designations made by the common council shall be by *viva voce* vote," does not necessarily mean that each member must orally announce his choice, and when a nomination is made either by a written resolution or oral motion, and each member announces his vote for or against it by his voice, the vote is *viva voce*. Matter of Brearton (1904), 44 Misc. 247, 89 N. Y. Supp. 893. The language referred to was omitted from new charter of 1906.

Election of clerk.—Where a city has a common council of seventeen members, a majority of nine members present may elect a clerk of the common council. Matter of Brearton (1904), 44 Misc. 247, 89 N. Y. Supp. 893.

§ 35. **Legislative acts.**—All the legislative acts of the common council shall be by ordinances, and on the passage of every ordinance, the yeas and nays of the members voting thereon shall be entered in full upon the journal. The passage of an ordinance shall require the affirmative vote of at least a majority of all the members of the common council. No ordinance shall be passed by the common council on the same day in which it is introduced, except by unanimous consent.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 35.

Publication essential to validity. Kneib v. People (1875), 6 Hun 238.

Application.—Must apply to citizens of all parts of state alike. See General Municipal Law, § 80.

Rules have not the force of ordinances. Armitage v. Fisher (1893), 74 Hun 167, 26 N. Y. Supp. 364.

Reasonableness.—Ordinances must be reasonable. Village of Carthage v. Frederick (1890), 122 N. Y. 271, 25 N. E. 480, 10 L. R. A. 178; City of Brooklyn v. Nassau El. R. R. Co. (1899), 38 App. Div. 365, 56 N. Y. Supp. 609; City of Buffalo v. Collins Baking Co. (1899), 39 App. Div. 432, 57 N. Y. Supp. 347; but an ordinance reasonable as to one state of facts may be unreasonable as to another. Ford v. Standard Oil Co. (1898), 32 App. Div. 596, 53 N. Y. Supp. 48.

Have force of statutes.—Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 10 L. R. A. 178; City of Buffalo v. N. Y., L. E. & W. R. R. Co. (1897), 152 N. Y. 276, 46 N. E. 496; City of Yonkers v. N. Y. C. & H. R. R. Co. (1898), 32 App. Div. 474, 52 N. Y. Supp. 1074, *affd.* (1900), 165 N. Y. 142, 58 N. E. 877; People ex rel. Cumisky v. Wurster (1897), 14 App. Div. 556, 43 N. Y. Supp. 1088; and cannot be impeached collaterally. Consumers' Gas Co. v. Congress Springs Co. (1893), 61 Hun 133, 15 N. Y. Supp. 624.

May be partly void.—Duryee v. Mayor (1884), 96 N. Y. 477.

Contracts in violation, void, whether party knew of ordinance or not. Burger v. Koelsch (1894), 77 Hun 44, 28 N. Y. Supp. 460.

Repeal revives former ordinance. Mayor v. Broadway, etc., Ry. Co. (1884), 97 N. Y. 275.

General statute on same subject does not render ordinance void. Polinsky v. People (1897), 11 Hun 390, *affd.* (1878), 73 N. Y. 65.

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Former ordinance imposing penalty for same offense. Mayor, etc., of New York v. Hyatt (1854), 3 E. D. Smith, 156.

§ 36. Appropriations.—No appropriations of money shall be made for any purpose except by ordinance specifying each item, the amount thereof, and the department or specific purpose for which the appropriation is made.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 36.

§ 37. Disposition of real estate; franchises.—No ordinance shall be passed making or authorizing a sale or lease of city real estate or of any franchise belonging to or under the control of the city except by vote of three-fourths of all the members of the common council. In case of a proposed sale or lease of real estate or of a franchise, the ordinance must provide for a disposition of the same at public auction to the highest bidder, under proper regulations as to the giving of security and after public notice to be published once each week for three weeks in the official paper or papers. A sale or lease of real estate or a franchise shall not be valid or take effect unless made as aforesaid and subsequently approved by a resolution of the board of estimate and apportionment. No franchise shall be granted or be operated for a period longer than fifty years. The common council may, however, grant to the owner or lessees of an existing franchise, under which operations are being actually carried on, such additional rights or extensions in the street or streets in which the said franchise exists, upon such terms as the interests of the city may require, with or without an advertisement, as the common council may determine; provided, however, that no such grant shall be operative unless approved by the board of estimate and apportionment, and also by the mayor.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 37.

§ 38. Procedure after passage of ordinance.—Every ordinance of the common council shall immediately after its passage be separately engrossed and signed by the president and attested by the clerk. The clerk shall thereupon present the same to the mayor. If the mayor approve it he shall sign it and return it to the clerk, and the ordinance shall thereupon take effect. If he disapprove it, he shall return it to the clerk with his objections stated in writing, and the clerk shall present the same with such objections to the common council at its next regular meeting. The common council may, within thirty days thereafter, reconsider the same; if, after such reconsideration, three-fourths of all the members of the common council shall vote to pass the ordinance the same shall take effect notwithstanding the objections of the mayor, unless a greater number of members were necessary according to the provisions of this chapter for the original passage of the ordinance, in which case unless as many members as were requisite for the original passage of the ordinance shall vote to pass the ordinance it shall not take effect. If any ordinance shall not be returned by the mayor to the clerk within ten days after it shall have

been presented to him, or if such ordinance shall be returned within such period without the mayor's approval or disapproval, the same shall take effect in like manner as if the mayor had approved and signed it. If any ordinance presented to the mayor contains several items of appropriation of money or embraces more than one distinct subject, the mayor may approve the provisions relating to one or more items or one or more subjects and disapprove the others. In such case those items or subjects which he shall approve shall take effect and he shall append to the ordinance at the time of signing it a statement of the items or subjects which he disapproves and said times or subjects so disapproved shall not take effect. He shall return to the clerk a copy of such statement and the items or subjects disapproved may be separately reconsidered by the common council and shall only become effective if again passed by it as above provided. All the provisions of this section in relation to ordinances disapproved by the mayor shall apply in cases in which he shall disapprove any item or subject contained in an ordinance appropriating money or embracing more than one distinct subject.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 38.

§ 39. **Record of ordinances.**—Every ordinance shall, upon its taking effect as herein provided, be recorded in a book kept for that purpose by the clerk. Such records shall include the signature of the president, attestation of the clerk and the mayor's written approval, or in case of his disapproval a memorandum of its passage over his veto; or in case the ordinance took effect because he failed to approve or disapprove and return within ten days, then a memorandum to that effect. Such record or a certified copy thereof, shall be presumptive evidence of the passage of the ordinance and of the facts certified. The original engrossed ordinances for each year shall be bound together and kept in the custody of the clerk.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 39.

Reference.—Proof of ordinance, Code Civ. Pro. § 941.

§ 40. **Regulations of duties of officers.**—The common council may, by ordinance passed by three-fourths of all its members, not inconsistent with this chapter, or other laws of the state, regulate the powers and duties of any city officer or department; and it has power to investigate all city officers and departments and shall have access to all records and papers kept by every city officer or department, and has power to compel the attendance of witnesses and the production of books, papers or other evidence at any meeting of the common council or of any committee thereof, and for that purpose may issue subpoenas signed by the president.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 40.

§ 41. **Executive functions; how performed.**—Whenever an executive or administrative function is by law or ordinance of the common council re-

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quired to be performed, the same shall be performed by the proper executive or administrative officer or department, designated in the law or ordinance, and in case no such designation be thus made the mayor shall make the same, but no ordinance shall be passed interfering with the exercise of the executive functions of the officers, departments and boards of the city, as provided in this chapter or otherwise by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 41.

References.—Omission of duty by a public officer, a misdemeanor, Penal Law, § 1857; commission of act prohibited by statute, a misdemeanor, Id. § 29.

Traffic regulations made by the commissioner of public safety, and not by the common council, are not rendered valid or effective by anything contained in this section. *Harding v. Cavanaugh* (1915), 91 Misc. 511, 155 N. Y. Supp. 374.

§ 42. **Penalties for violation of ordinances.**—Any person violating an ordinance of the common council shall be guilty of a misdemeanor and the common council may provide therein or by general ordinance, that any person guilty of such violation shall be liable to fine which shall not exceed one hundred and fifty dollars in amount, or to imprisonment not exceeding one hundred and fifty days, or to both such fine and imprisonment, or such ordinance may provide for a penalty, not exceeding five hundred dollars to be recovered by the city in a civil action. The city may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with, or to restrain by injunction the violation of, any ordinance of the common council or of the commissioner of public safety, notwithstanding that the ordinance may provide a penalty for such violation.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 42.

§ 43. **Designation of official papers; official printing.**—At the first meeting of the common council for the purpose of organization, as provided herein, it shall designate not more than two newspapers published in the city to be the official paper or papers of the city. The common council may, by two-thirds vote of all its members, determine to designate but one official paper, in which case it shall designate a daily newspaper, and the paper receiving the highest number of votes shall be the official paper for two years and until a successor is designated. Unless the common council shall so determine to designate but one official paper, it shall designate two official papers, of opposite political faith, and of which at least one shall be a daily newspaper, and each member shall be entitled to vote for but one paper, and the two papers having the highest number of votes shall be the official papers for two years and until a successor or successors shall be designated. Such official paper or papers shall publish such matters and in such form as shall be prescribed by statute or otherwise by general ordinance of the common council. In case an official paper shall refuse or fail to act or perform as such, the common council may in its discretion, as hereinbefore provided, designate a successor. All bills and

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accounts for publication in official newspapers and all city printing and advertising shall be a city charge, and shall be paid by the treasurer upon the audit of the comptroller. The common council may, by general ordinance, prescribe the form in which the proceedings and reports of the city officers, boards and departments shall be issued, and the printing and binding of the same shall be performed under contract awarded as in the case of other city contracts.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 43.

Opposite political faith.—The newspapers must be of opposite political faith. The designation of an independent newspaper is unauthorized, as it sustains the principles of no political party. The object of the provision is to bring political matters before the newspaper readers of the two principal parties and the designation of an independent newspaper may not have this effect. *People ex rel. Troy Press Co. v. Common Council* (1906), 114 App. Div. 354, 99 N. Y. Supp. 1045, *affd.* (1906), 186 N. Y. 548, 79 N. E. 1113.

Publication of tax notices.—This section applies to the publication of notices in the city of Troy, and thus repeals by implication special acts requiring such local publication to be made in newspapers appointed as therein designated. *Matter of Troy Press Co.* (1906), 115 App. Div. 25, 100 N. Y. Supp. 516, *affd.* (1907), 187 N. Y. 279, 79 N. E. 1006.

Notice of redemption of tax sales to be published in papers designated under this act rather than under a prior local statute. *Matter of Troy Press Co.* (1907), 187 N. Y. 279, 79 N. E. 1006, *affd.* (1906), 115 App. Div. 25, 100 N. Y. Supp. 516.

§ 44. **Penalties.**—Any member of the common council who shall knowingly or unlawfully disregard any provision of law applicable to the members thereof, or who shall vote for any ordinance or measure in violation of law, or any appropriation unauthorized by law or in excess of the amount authorized by law, or for any illegal or injurious disposition of corporate property rights or privileges, shall be guilty of a misdemeanor and liable to the punishment and penalty prescribed therefor, and every member voting in favor thereof shall be individually liable to refund the amount to the city at the suit of any taxpayer.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 44.

ARTICLE V.

MAYOR.

Section 50. Executive power.

51. Acting mayor.
52. Secretary and assistants.
53. Consultation with heads of departments.
54. Duties of mayor.
55. Execution of deeds and contracts.
56. Examination of books and accounts.
57. Additional powers and duties.

§ 50. **Executive power.**—The executive power of the city is vested in the mayor, and in such executive officers and departments as are or may be created by law, or by ordinance of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 50.

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References.—Oath of office, Public Officers Law, § 10. Failure to take, Penal Law, §§ 1820, 1821; Public Officers Law, § 15.

§ 51. **Acting mayor.**—Whenever there shall be a vacancy in the office of mayor, or whenever by reason of sickness or absence from the city the mayor shall be prevented from attending to the duties of the office, the president of the common council shall act as mayor and possess all the rights of mayor during such period of disability or absence. In case of a vacancy in the office of mayor he shall so act until noon of the first day of January next succeeding the election at which the mayor's successor shall be chosen. It shall not be lawful for the president of the common council when acting as mayor in consequence of the absence or sickness of the mayor to exercise any power of appointment or removal from office unless such sickness or absence shall have continued for a period of thirty days; or to sign, approve or disapprove any ordinance or resolution unless such sickness or absence shall have continued for a period of at least nine days.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 51.

§ 52. **Secretary and assistants.**—The mayor shall appoint a secretary and such other assistants as may be prescribed by the board of estimate and apportionment.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 52.

§ 53. **Consultation with heads of departments.**—The mayor shall call together the heads of the city departments for consultation and advice upon the affairs of the city as often as he may deem advisable, but not less than twelve times in each year; and at such meetings he may call upon the heads of the departments for such reports as to the subject matters under their control and management as he may deem proper, which it shall be their duty to prepare and submit at once to him. Records shall be kept of such meetings, and rules and regulations shall be adopted thereat for the harmonious, systematic and efficient administration of the affairs of the city, not inconsistent with law or ordinance.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 53.

§ 54. **Duties of mayor.**—It shall be the duty of the mayor to see that the city officers and departments faithfully perform their duties; to maintain peace and good order within the city; to take care that the laws of the state and the ordinances of the common council are executed and enforced within the city; to communicate by written message to the common council at least once a year a statement of the finances and general conditions of the affairs of the city, and with such recommendations in relation thereto as he may deem proper; to give such information in relation to the same as the common council may from time to time require; and to call a special meeting of the common council whenever in his judgment it is required by public necessity. He shall also receive and examine into

all complaints made against any city officer for neglect of duty or malfeasance in office.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 54.

Legislative bills.—Duties in relation to. See General City Law, §§ 30-35.

§ 55. **Execution of deeds and contracts.**—The mayor shall, on behalf of the city, execute all deeds and contracts made by it and shall cause to be affixed thereto the city seal.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 55.

Mandamus.—Action of mayor may be compelled by. *People ex rel. Lighton v. McGuire* (1900), 31 Misc. 324, 65 N. Y. Supp. 463; *Peo. ex rel. Lynch v. Lennon* (1911), 147 App. Div. 537, 132 N. Y. Supp. 620.

§ 56. **Examination of books and accounts.**—The mayor shall have authority at all times to examine the books and papers of any officer, employee or department of the city and, as often as he may deem proper, to appoint one or more competent persons to examine, without notice, the accounts of any city officer or department, and the money, securities and property belonging to the city in the possession or charge of any officer or department and to report the result of such examination; and he may administer oaths to witnesses and take affidavits in all cases relating to the affairs of the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 56.

§ 57. **Additional powers and duties.**—The mayor shall have such other powers and perform such other duties as may be prescribed in this chapter or by other laws of the state or by ordinance of the common council, not inconsistent with law. In case of riot, conflagration or other public emergency requiring it, the mayor shall have power to call out the police and firemen; he shall also have power to appoint such number of special policemen as he may deem necessary to preserve the public peace. Such special policemen shall be under the sole control of the regularly appointed and constituted officers of the police department. They shall have power to make arrests only for public intoxication, disorderly conduct or other offenses against peace and good order. In case of riot or insurrection, he may take command of the whole police force, including the chief executive officer thereof.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 57.

ARTICLE VI.

DEPARTMENT OF FINANCE.

Section 60. Temporary and funded debts.

61. Issue and sale of bonds.

62. Comptroller and deputy comptroller.

63. Duties of comptroller.

64. Claims against the city.

65. Custody and management of sinking fund.
66. Accounts with treasurer.
67. Annual financial statement.
68. Treasurer and deputy treasurer.
69. Duties of treasurer.
70. Deposits and accounts.
71. Board of estimate and apportionment.
72. Sinking fund.
73. Fiscal year; departmental estimates.
74. Determination of positions and salaries.
75. Annual estimate.
76. Annual appropriations.
77. Tax budget.
78. Temporary loans.
79. Contracts and expenditures prohibited.
80. Penalties for violation of preceding section.
81. Appropriations for band concerts.

§ 60. Temporary and funded debts.—Temporary and funded debts of the city for the various purposes authorized and contemplated by this chapter and otherwise by law, may be created by ordinance of the common council, provided, however, that any such ordinance shall, before it takes effect, be submitted to and approved by the board of estimate and apportionment. Funded debts may be created for any municipal purpose, including the raising of funds to meet any deficiency in the collection of taxes heretofore or hereafter levied on property of another municipality arising from the refusal of such other municipality to pay such taxes on the ground that the property assessed for such taxes is exempt from taxation. The creation of funded and temporary debts and the refunding of existing debts, shall be subject to the provisions of the general municipal law, except as otherwise herein provided. Every funded debt, refunded or created, except to provide for the supply of water, shall be issued in such amounts and shall fall due at such time that the principal of the same shall be fully paid in not more than twenty equal annual installments, the last of which shall become due at the end of not more than twenty years after its issue. Every funded debt refunded or created to provide for the supply of water shall be issued in such amounts and fall due at such times that the principal of the same shall be fully paid in not more than forty equal installments, the last of which shall become due at the end of not more than forty years after its issue, and may by the ordinance creating said funded debt be made payable out of water rents received by the city. Any bonds of the city heretofore issued, other than revenue bonds, and not payable in annual installments, may be refunded. No funded debt which is payable in annual installments shall be refunded, but provision shall be made for the payment of each installment and accrued interest in the year in which it shall become due by the insertion of the proper sum in the annual estimate for the year in question. An ordinance creating a funded debt may

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provide that the bonds therein authorized shall contain a recital that they are issued pursuant to law and an ordinance of the common council, as provided by section sixty of the second class cities law. Such recital, when so authorized, as aforesaid, shall be conclusive evidence of the regularity of the issue of said bonds and of their validity. (*Amended by L. 1910, ch. 692, L. 1911, ch. 60, L. 1913, ch. 43 and L. 1915, ch. 428.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 60, as amended by L. 1908, ch. 190.

References.—See General Municipal Law, §§ 5–12.

§ 61. **Issue and sale of bonds and other obligations.**—All bonds of the city for whatever purposes issued shall be advertised and sold by the comptroller. He shall cause to be published in an official daily paper or papers, daily for not less than five successive days, Sundays excepted, a notice containing a description of the bonds to be sold, the manner and place of sale and the time when the same shall be sold, or the time limited for the receipt of sealed proposals, which shall not be less than ten days from the first publication of said notice. When bonds are sold under sealed proposals, no proposal shall be opened until one hour after the time limited for the receipt thereof has elapsed, and all proposals shall be opened in public. Award shall be made to the highest bidder. At any sale of bonds either by auction or under sealed proposals, the comptroller may reject all bids and readvertise if in his opinion the price offered is inadequate. All bonds shall be signed in the name of the city, by the mayor and treasurer, and countersigned by the comptroller. A list of all bonds issued by the city shall be kept in the comptroller's office and when any bonds are paid by the treasurer, they shall be presented by him to the comptroller for cancellation. The comptroller, with the consent of the board of estimate, may determine that the whole or any part of an issue of bonds or other obligations of the city shall be made payable in the currency of a country other than the United States, and such bonds or other obligations so to be sold shall be made payable in such currency, with certificates in such amounts and sold in such manner as may be duly authorized by the board of estimate. The proceeds of sales of such bonds or other obligations shall be recorded in the books of the department of finance in the terms of the currency of the United States as well as in the terms of the foreign currency in which such bonds or other obligations shall have been issued. (*Amended by L. 1914, ch. 56.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 61.

§ 62. **Comptroller and deputy comptroller.**—The comptroller may appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of the absence or disability of the comptroller, or of a vacancy in the office, the deputy shall discharge the duties of the office until the comptroller returns, his disability ceases or the vacancy is filled. The

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comptroller and deputy comptroller, before entering upon the duties of their respective offices, shall each execute and file with the city clerk an official undertaking in such penal sum as may be prescribed by the common council. The comptroller and deputy comptroller shall each be ex officio a commissioner of deeds.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 62.

§ 63. **Duties of comptroller.**—The comptroller shall superintend the fiscal affairs of the city and manage the same pursuant to law and ordinance of the common council. He shall keep a separate account with every department and with each improvement for which funds are appropriated or raised by tax or assessment. No warrant shall be drawn by him for the payment of any claim against or obligation of the city unless it state particularly against which of such funds it is drawn. No fund shall be overdrawn nor shall any warrant be drawn against one fund to pay a claim chargeable to another. The comptroller shall perform such other and further duties, as may from time to time be prescribed by law, or by ordinance of the common council, not inconsistent with the provisions of this chapter or the other laws of the state.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 63.

§ 64. **Claims against the city.**—No claim against the city except for a fixed salary, for the principal or interest on a bonded or funded debt or other loan, or for the regular or stated compensation of officers or employees in any city department, or for work performed or materials furnished under contract with the board of contract and supply, shall be paid unless a claim therefor, verified by or on behalf of the claimant, in such form as the comptroller shall prescribe, and approved by the head of the department or officer whose action gave rise or origin to the claim, shall have been presented to the comptroller, and shall have been audited and allowed by him. The comptroller shall cause each such claim, upon presentation to him for audit, to be numbered consecutively and the number, date of presentation, name of claimant and brief statement of character of each claim shall be entered in a book kept for such purpose, which shall at all times during office hours be so placed as to be convenient for public inspection and examination. No claim shall be audited or paid until at least five days have elapsed after its presentation to the comptroller, and the comptroller shall not be required to audit a claim until two weeks have expired after the expiration of such period of five days. The comptroller is authorized, in considering a claim, to require any person presenting the same for audit to be sworn before him touching the justness and accuracy of such claim, and to take evidence and examine witnesses in reference to the claim, and for that purpose he may issue subpoenas for the attendance of witnesses. If the claimant be dissatisfied with the audit he may appeal to the board of estimate and apportionment by serving notice of appeal

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in writing upon the comptroller and the common council at any time before the first regular meeting of the common council that is held after he receives the comptroller's audit. If the common council or any taxpayer be dissatisfied with such audit it, or he, may appeal to the same board on behalf of the city, in like manner, by serving notice of appeal upon the claimants and the comptroller and the treasurer within ten days after the meeting of the common council at which such claims shall have been reported by the comptroller. The board of estimate and apportionment shall make rules for the procedure upon the hearing of such appeals and the decision and audit of that board, after the hearing upon the appeal to it, shall be final and conclusive as to the amount of the claim; but if there be no appeal from the original audit it shall in like manner be final and conclusive. Upon the appeal herein provided for, the treasurer shall take the place of the comptroller as a member of the board. The comptroller and the board of estimate and apportionment upon an appeal to it, as herein provided, shall have authority to take evidence and examine witnesses in reference to the claim and for that purpose may issue subpoenas for the attendance of witnesses; and the comptroller and each member of the board of estimate and apportionment is hereby declared to be ex officio a commissioner of deeds. When a claim has been finally audited by the comptroller he shall indorse thereon or attach thereto his certificate as to such audit, and the same shall thereupon be filed in and remain a public record in his office. If any person shall present to the comptroller for audit a claim in the name of any person or firm other than that of the actual claimant he shall be guilty of a misdemeanor.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 64.

References.—False audit and paying of claims, a felony, Penal Law, §§ 1863, 1864. When costs not allowed. Code Civ. Pro. § 3245. Presentation to fiscal officer, *Id.* See, also, Village Law, § 89, subd. 21, cases cited on notice, etc.

§ 65. **Custody and management of sinking fund.**—The comptroller shall have, under the direction of the board of estimate and apportionment, the custody, investment and management of any sinking fund provided for the payment or redemption of city debts.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 65.

§ 66. **Accounts with treasurer.**—The comptroller shall keep an account between the city and the treasurer, and of all moneys received and disbursed by the treasurer, and for that purpose he shall procure daily statements from the treasurer as to the moneys received and disbursed by him, and shall also procure from the banks in which the city funds are deposited by the treasurer, monthly statements of the moneys which have been received and paid out on account of the city. He shall examine the treasurer's books, accounts and bank books, and ascertain as to their correctness, and shall render quarterly a detailed report to the mayor and common council of the funds and financial condition of the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 66.

§ 67. **Annual financial statement.**—The comptroller shall, within thirty days after the close of each fiscal year, prepare and publish in book or pamphlet form a full and accurate statement in detail, verified by his oath showing: (1) the receipts and revenues of the city from all sources and the accounts which may be due to the city and uncollected at the close of the fiscal year; (2) the disbursements from all city funds and the expenditures in all branches of the city government during the fiscal year; (3) the indebtedness of the city at the close of the fiscal year, the provisions made for the payment thereof together with the purposes for which it was incurred; (4) the cost of the acquisition, construction and operation of each public utility owned, maintained, or operated by the city and the income derived therefrom. Such publication shall be accompanied by a statement in detail, in separate columns, showing the several funds belonging to the city, the amount drawn on each fund and its then present condition, also the several debts and obligations of the city, the character thereof, when the same are payable and the rate of interest on each.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 67.

§ 68. **Treasurer and deputy treasurer.**—The treasurer may appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of the absence or disability of the treasurer, or of a vacancy in the office, the deputy shall discharge the duties of the office until the treasurer returns, his disability ceases or the vacancy is filled. The treasurer and deputy treasurer, before entering upon the discharge of the duties of their respective offices, shall each execute and file with the city clerk, an official undertaking in such penal sum as may be prescribed by the common council. Such undertaking, when approved as provided by law, shall have the same force and effect, and shall be filed and recorded in the office of the county clerk of the county in which the city is located in the same manner as is required in the case of an undertaking of a town collector.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 68.

References.—Official bonds generally, Public Officers Law, §§ 11-13. Acting without filing, Penal Law, §§ 1820, 1821; Public Officers Law, § 15.

§ 69. **Duties of treasurer.**—The treasurer shall demand, collect, receive and have the care and custody of and shall disburse all moneys belonging to or due the city from every source, except as otherwise provided by law. All moneys of the city received by the treasurer shall be deposited by him daily in such banks or trust companies as shall be designated by the board of estimate and apportionment for such purpose. The interest on all deposits shall be the property of the city and shall be accounted for and credited to the appropriate fund. No money shall be drawn from a city depository except on checks or drafts signed by the treasurer and countersigned by the comptroller and made payable to the person entitled

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to receive the same, unless such moneys be drawn for public use in the treasurer's office, in which case the checks or drafts shall be made payable to the order of the treasurer. The treasurer shall keep a separate account with every department and with each improvement for which funds are appropriated or raised by tax or assessment, and in every check or draft drawn by him he shall state particularly against which of such funds it is drawn, unless the money is drawn for use in his office. He shall at no time permit any fund to be overdrawn, nor draw upon one fund to pay a claim chargeable to another. No money shall be paid out by him except upon the warrant of the comptroller. He shall render to the comptroller at the end of each day's business a detailed statement of all moneys received and paid out by him. He shall perform such other duties, as may from time to time be prescribed by law, or by ordinance of the common council, not inconsistent with the provisions of this chapter, or the laws of the state.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 69.

§ 70. **Deposits and accounts.**—All moneys deposited by the treasurer, as provided herein, shall be placed to the credit of the city. The treasurer shall keep bank books in which shall be entered his accounts or deposits in, and moneys drawn from, the banks or trust companies in which such deposits shall be made. He shall exhibit such books to the comptroller for his inspection at least once each month, and oftener if required. The banks or trust companies in which such deposits are made, shall respectively transmit to the comptroller monthly statements of the moneys which shall have been received and paid out by them on account of the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 70.

Proceeds of bond sale.—The statute does not require the proceeds of a sale of bonds issued for a specific purpose to be deposited in a separate bank account. Such proceeds, however, should be kept intact and not devoted to any other purpose. Rept. of Atty. Genl. (1912) 472.

§ 71. **Board of estimate and apportionment.**—There shall be a board of estimate and apportionment, which shall consist of the mayor, comptroller, corporation counsel, president of the common council, and the city engineer, except that when the number of subordinates, or the salaries thereof, in the department of any of the members of the said board are to be fixed and determined, the treasurer shall temporarily take the place of the member whose number of subordinates, or the salaries thereof, is under consideration, for the purpose of fixing such salaries or number of subordinates, and for that purpose alone. The members of the board shall meet upon the call of the mayor, or as directed by the board. The mayor shall be president of the board and the city clerk shall act as secretary thereof. The secretary shall keep a journal of all of the proceedings of the board.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 71.

§ 72. **Sinking fund.**—Unless under special laws governing the city at the time this chapter takes effect provision is made for the creation or maintenance of a sinking fund or funds for any purpose, thirty per centum of all moneys or revenues received by the city or by any officer, board or department thereof, from any source other than taxes or loans shall, upon receipt of the same, be forthwith deposited in a separate account or accounts in one or more of the designated fiscal depositories of the city to the credit of the bonded indebtedness of the city, and said deposit shall be known as the sinking fund. The sinking fund shall be used exclusively for the payment of the principal of the bonded indebtedness of the city, other than revenue or assessment bonds, as it matures. If, under the special laws governing the city at the time this chapter takes effect, provision is made for the creation or maintenance of a sinking fund or funds for any purpose, such sinking fund or funds shall continue and be maintained as provided in such laws.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 72.

§ 73. **Fiscal year; departmental estimates.**—The fiscal year of the city shall commence on the first day of January. On or before the first day of November in each year all heads of departments and officers empowered by law or by city ordinance to control or authorize expenditures shall furnish to the mayor estimates in writing of the amount of expenditures for the next fiscal year in their respective departments or offices, including a statement of the salaries of all their subordinates, which estimates the mayor shall lay before the board of estimate and apportionment at its first meeting thereafter, and the same shall be entered in its minutes.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 73.

§ 74. **Determination of positions and salaries.**—The board of estimate and apportionment, except as otherwise provided by law, shall have authority to fix the salaries or compensation, and determine the positions and numbers of all city officers and employees, of each office, board and department, but the salary or compensation of every officer and employee shall be thus fixed before his election or appointment, except in the first instance after the city shall have become a city of the second class and subject to the provisions of this chapter.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 74.

§ 75. **Annual estimate.**—Within sixty days after the commencement of each fiscal year, the board of estimate and apportionment shall make an itemized statement, in writing, of the estimated revenues and expenditures of the city for the fiscal year, which shall be known as its annual estimate, provided, however, that if in the city the taxes for state, county and city purposes are included in one levy, the common council may, by ordinance, direct that the said estimate be made within sixty days prior to the commencement of such fiscal year. The estimate of revenues shall contain an

estimate of the probable revenues which, in the judgment of the board of estimate and apportionment, will be received by the city during the fiscal year, less the amount required to be deposited to the credit of the sinking fund, if any; a statement of the amount of the sinking fund which, in the judgment of the board of estimate and apportionment, is available and should be applied to the payment of the principal of any bonded indebtedness of the city falling due during the said fiscal year; and a statement of all unexpended balances or estimated unexpended balances of the previous fiscal year remaining to the credit of the city, or of any office, board or department thereof. The estimate of expenditures shall contain an estimate of the several amounts of money which the board of estimate and apportionment deems necessary to provide for the expenses of conducting the business of the city in each board, department and office thereof and for the various purposes contemplated by this chapter and otherwise by law for the said fiscal year; to pay the principal and interest of any bonded or other indebtedness of the city falling due during the said fiscal year; and the amount of any judgments recovered against the city and payable during the said fiscal year. After said annual estimate shall have been completed, the board of estimate and apportionment shall submit the same in final form to the common council with a statement, in writing, of such reasons for such estimate as it may deem proper. The common council shall as soon thereafter as may be possible, convene and consider the said estimate. It shall give a public hearing to such persons as wish to be heard in reference thereto. After such hearing, and, within thirty days after such estimate shall have been submitted to it, the common council shall adopt such estimate so submitted or shall diminish or reject any items therein contained, and adopt said estimate as so amended. The common council shall not have the power to diminish or reject any item which relates to salaries, the indebtedness or estimated revenues, or the sums directed by the board of supervisors of the county within which the city is situated to be levied within the city for state and county purposes, or the sums lawfully payable within said fiscal year upon judgments; nor shall the common council increase any item, for any purpose contained in said estimate.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 75.

Effect of the act of 1906 relative to the annual estimate and tax budget.—The Board of Education of the city of Troy had power to provide for a High School of Commerce in December, 1907, and appoint the principal therefor in January, 1908, although the expenditures for the same were not included in the estimates made under the act of 1898 for the year of 1908. *People ex rel. Harris v. Board of Estimate & Apportionment* (1909), 131 App. Div. 358, 115 N. Y. Supp. 907.

§ 76. Annual appropriations.—When the common council shall have adopted the final estimate of the board of estimate and apportionment or said estimate as amended by it, the same shall be entered at large in its minutes and become a part of its proceedings. The several sums estimated

for expenditures therein shall be and become appropriated in the amounts and for the several departments, offices and purposes as therein specified for the said fiscal year. The several sums therein enumerated as estimated revenues and the moneys necessary to be raised by tax in addition thereto to pay the expenses of conducting the business of the city and for the purposes contemplated by this chapter and otherwise by law, shall be and become applicable in the amounts therein named for the purposes of meeting said appropriations. In case the revenues received by the city exceed the amount of such estimated revenues named in said annual estimate, or in case there remain any unexpended balances of appropriations made for the support of the city government or for any other purpose, then such surplus revenues or such unexpended balances shall, except as otherwise provided by law, remain upon deposit and be included as a part of the estimated revenues for the succeeding year. When any moneys or revenues are received by any officer, board or department of the city, from any source other than by municipal tax, which are not otherwise appropriated, such moneys or revenues may be used and applied toward and in addition to the funds appropriated, as aforesaid, in such manner as in the judgment of the board of estimate and apportionment may be most beneficial to the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 76, as amended by L. 1908, ch. 191.

§ 77. **Tax budget.**—The amount of estimated expenditures contained in the annual estimate adopted by the common council, less the amount of estimated revenues applicable to the payment thereof and the amount of all judgments payable prior to the tax levy, shall constitute the tax budget. The common council shall levy and cause to be raised by tax the amount of said budget, and the amount shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the city at the time and in the manner provided by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 77.

§ 78. **Temporary loans.**—In the interval between the beginning of the fiscal year and the adoption of the annual estimate the city shall have the power to borrow money to the extent required to pay fixed salaries, the principal and interest on bonded or funded debts or other loans, the stated compensation of officers and employees and indebtedness for work performed or materials furnished under contract with the board of contract and supply. After the adoption of said annual estimate it shall have the power to borrow money for the payment of the debts and expenses of the city, within the amounts appropriated therefor for the fiscal year, in anticipation of the receipt of the said taxes and revenues applicable to such purposes. The common council may provide for the issue of certificates of indebtedness or revenue bonds, to be signed by the mayor and treasurer and countersigned by the comptroller, for such purposes, and, subject to

the provisions of this section as to payment out of moneys received on account of taxes and revenues applicable thereto, may renew the same. Such certificates or bonds, or renewals thereof, together with interest thereon to date of maturity, shall be paid out of the moneys received on account of taxes and revenues applicable to such purposes. (*Amended by L. 1916, ch. 159.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 78, as amended by L. 1908, ch. 191.

§ 79. **Contracts and expenditures prohibited.**—No officer, board or department shall, during any fiscal year, expend or contract to be expended any money or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money for any of the purposes for which provision is made in the annual estimate in excess of the amounts appropriated in said estimate, as adopted by the common council, for such officer, board, department or purpose, for such fiscal year. Any contract, verbal or written, made in violation of this section shall be null and void as to the city, and no moneys belonging to the city shall be paid thereon, provided, however, that nothing herein contained shall prevent the making of contracts for light or water, the collection and disposal or the disposal of garbage, the collection and removal of rubbish and ashes, the cleaning of streets, or the sprinkling of streets or public places by railway cars, for periods exceeding one year.

Nothing herein contained, however, shall be held to prohibit the commissioner of public safety from expending such sums or incurring such debts, as may be actually necessary to prevent the spread of, or to suppress any contagious or infectious disease, or any epidemic in the city, in addition to the amount appropriated for such purpose. (*Amended by L. 1912, ch. 195.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 79, as amended by L. 1908, ch. 34.

References.—Taxpayers' actions to restrain unlawful acts of city officers, General Municipal Law, § 51. Indebtedness of certain cities limited, Id. §§ 3, 83. Misappropriations by public officers generally, Penal Law, §§ 1838, 1865.

Validity of claims.—The enactment of a statute recognizing claims against a municipality which, though technically illegal, are morally meritorious, is an exercise of constitutional power. *People ex rel. Wiffler v. Miller* (1910), 68 Misc. 445, 124 N. Y. Supp. 368.

§ 80. **Penalties for violation of preceding section.**—Any officer or member of any board or department of the city, making or voting for any contract prohibited by the preceding section, or auditing any account or claim under any such contract, shall be deemed guilty of a misdemeanor.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 80.

§ 81. **Appropriations for band concerts.**—The board of estimate and apportionment may include in the annual estimate and appropriate an amount, not exceeding five thousand dollars, to be expended by the super-

intendent of parks under the supervision and direction of the commissioner of public works, in providing public band concerts in the public parks or places of the city. (*Added by L. 1911, ch. 493.*)

ARTICLE VII.

DEPARTMENT OF PUBLIC WORKS.

- Section 90. Commissioner and deputy commissioner of public works.
- 91. Powers and duties of commissioner.
 - 92. Repair of sidewalks; removal of snow and ice.
 - 93. Performance of public work to be certified.
 - 94. Water-works.
 - 95. Collection of water rents.
 - 96. Superintendent of parks.
 - 97. City engineer.
 - 98. Duties of city engineer.
 - 99. Alteration of grades and names of streets.
 - 100. Apportionment of city's expense of improvements.
 - 101. Discontinuance of streets.
 - 102. Streets by prescription.
 - 103. Acquisition of lands.

§ 90. Commissioner and deputy commissioner of public works.—The commissioner of public works shall be the head of the department of public works. He shall appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of the absence or disability of the commissioner or of a vacancy in the office, the deputy commissioner shall discharge the duties of the office until the commissioner returns, his disability ceases or the vacancy is filled. The commissioner and deputy commissioner before entering upon the discharge of the duties of their respective offices shall each execute and file with the city clerk an official undertaking in such penal sum as may be prescribed by the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 90.

References.—Oath of office, Public Officers Law, § 10. Failure to take, Penal Law, §§ 1820, 1821. Effect on official acts, Public Officers Law, § 15. Powers of deputies, *Id.* § 9. Vacancies generally, *Id.* § 30. Official bonds generally, Public Officers Law, §§ 11–13. Acting without filing, Penal Code, §§ 1820, 1821; Public Officers Law, § 15.

A superintendent of sidewalks and sidewalk repairs is an employee and not an officer of the city. He is not a deputy within the meaning of this section. The act of the board of estimate and apportionment in fixing the salary of such employee did not operate to create an office which carried with it a salary, of which the incumbent could not be deprived. *Griebe v. City of Syracuse* (1904), 94 App. Div. 133, 87 N. Y. Supp. 1083.

§ 91. Powers and duties of commissioner.—The commissioner, subject to the provisions of law and ordinances of the common council, has cognizance, direction and control of the construction, maintenance, alteration, repair,

care, cleaning, paving, flagging, lighting and improving of the streets, highways, sidewalks and public places of the city; of the construction, alteration and repair of all city buildings and of all docks and bridges belonging to the city; of all public sewers and drains in the city; of the construction, maintenance, extension, repair and care of the city waterworks; of the care, superintendence and management and improvement of all parks and grounds, public baths and recreation piers belonging to the city. Except as otherwise provided by law, the commissioner shall have supervision of, control over and jurisdiction and authority to make all ordinary repairs or improvements upon the streets, parks, sidewalks, crosswalks, gutters, vaults, drains, culverts, bridges and public ways and places of the city, including the cleaning, sprinkling, laying of dust with substances other than water, watering and flushing of the same, and may employ such laborers and teams and incur such expenditures as may be necessary within the limits of the appropriations made therefor. It shall be his duty to inspect the same with sufficient frequency to ascertain their condition and cause the same to be kept free from obstructions and in good condition and repair and reasonably safe for public use. The commissioner shall also have general supervision and control of all work performed under any contract of the city for local or other improvements to be performed within or upon any of the public streets, parks, ways and places, or with reference to the public works and ways within the jurisdiction of his department, including the lighting, sprinkling, laying of dust with substances other than water, watering or flushing of the streets or public places, and shall cause the same to be performed in full compliance with the provisions of any contract therefor. Except as otherwise provided by law or ordinance of the common council, the commissioner of public works has, over the streets and public places within the city, all the jurisdiction and is charged with all the duties of commissioners of highways within the towns of the state. (*Amended by L. 1912, ch. 189.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 91.

§ 92. **Repair of sidewalks; removal of snow and ice.**—The commissioner of public works shall have full power and authority to require the owner of property abutting upon a street to repair any sidewalk in front thereof or bring the same to true grade, and to remove the snow and ice therefrom. Where the owner of such property shall fail or neglect to repair any sidewalk or bring the same to true grade for five days after written notice so to do has been served on him, either personally or by delivering the same at his residence, or if he be a non-resident by mailing the same to him at his last known place of residence, or if the name of the owner or his place of residence can not be ascertained after due diligence, by posting the same in a conspicuous place upon the premises; or where the owner of any such premises shall fail or neglect to remove snow and ice from any such sidewalk after the same has remained thereon for more than

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twelve hours, and the commissioner shall have repaired such sidewalk or brought the same to grade or removed the ice or snow therefrom, a bill for the expenses incurred thereby shall be presented to the owner personally or by leaving the same at his residence or, if he be a non-resident, by mailing the same to him at his last known place of residence, or, if the name of such owner or his place of residence can not be ascertained after due diligence, by posting the same in a conspicuous place on the premises; and, if he shall fail to pay the same within ten days thereafter, the commissioner shall file each year immediately preceding the time for making the annual assessment-roll his certificate of the actual cost of the work, together with a statement as to the property in front of which the repairing or grading or cleaning was done, with the assessors of the city, who shall, in the preparation of the next assessment-roll of general city taxes, assess such amount upon such property, and the same shall be levied, corrected, enforced and collected in the same manner, by the same proceedings, at the same time, under the same penalties and having the same lien upon the property assessed as the general city tax and as a part thereof.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 92.

Failure of lot owner to comply with statute does not render him liable to a party injured. *Ryan v. City of Schenectady* (1915), 91 Misc. 296, 154 N. Y. Supp. 890.

§ 93. **Performance of public work to be certified.**—All public work performed pursuant to contract under the supervision or control of the commissioner shall, before it is accepted, be certified to by him to the effect that such work has been performed in a good and substantial manner with the materials required, of the quality and in the manner directed by the terms of the contract under which the same was done. Within ten days after the completion of any such work the commissioner shall file a certificate of such completion with the comptroller and with the city clerk, to be reported by him to the common council. Such certificate shall state in substance that said work has been duly examined by the commissioner and that the same has been fully performed and completed in accordance with the terms of the contract therefor.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 93.

§ 94. **Water works.**—In case the city owns and operates a system of municipal water works, the commissioner of public works shall appoint, to hold office during his pleasure, a superintendent of water works, who shall have, under the direction of the commissioner, the supervision, care, management and control of the water department and water-works system of the city. It shall be the duty of the commissioner of public works to see that the city has an abundant supply of pure and wholesome water for public and private use; to devise plans and sources of water supply; to plan and supervise the construction, maintenance and extension of the water system and the distribution of water throughout the city; to protect it from contamination; to prescribe rules and regulations for its use, which,

when ratified and approved by the common council, shall have the same force and effect as city ordinances. He shall have power, with the assent of the board of estimate and apportionment, to establish rates of rents to be charged and paid annually for the supply of water or for the benefits resulting therefrom, to be called water rents, which shall be apportioned to the different classes of buildings in the city in reference to their dimensions and the ordinary uses of water for the same, and to different lots, as may be practicable, and from time to time to modify and amend, increase or diminish such rates and to extend them to other descriptions of buildings, lots, establishments and uses. He shall also have power, with like assent, to establish rates for the use of water in buildings, establishments, trades and other purposes in or for which water is consumed beyond the quantity required for ordinary purposes, and may require the same paid to him in advance, at the rates thus established, before permission to use such extra quantity of water shall be given.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 94.

Effect upon management of water system.—When the city of Binghamton, having attained a population of 50,000 inhabitants, automatically became a city of the second class, the former act governing the water supply of said city was repealed by implication, although not specifically mentioned in the Second Class Cities Law, and under section 94 of the latter act the control of the water system of said city passed under the supervision, care, management and control of the superintendent of water works appointed by the commissioner of public works. The statute authorizing a water supply for the city of Binghamton did not make the water system the private property of a corporation, and hence the system was not owned by the water commissioners of said city. *Water Commissioners of City of Binghamton v. City of Binghamton* (1916), 173 App. Div. 327, 158 N. Y. Supp. 888, *affd.* (1916), 219 N. Y. 585, 114 N. E. 1085.

§ 95. **Collection of water rents.**—All water rents shall be collected from the owners of the lots and buildings which shall be situated upon any street or avenue upon which the distributing pipes are now or may hereafter be laid, and from which such lots and buildings can be supplied with water. Water rents, together with the amounts due and unpaid for the introduction and measurement of the supply of water, shall be, like other taxes of the city, a lien upon the lots and buildings against which the same are chargeable. It shall be the duty of the commissioner each year, immediately preceding the time for the making of the annual assessment-roll, to make out a list or roll of each ward or assessment district of the city, in which he shall set out the amount of water rents accrued or chargeable upon each lot, part of lot or building, and which shall not have been paid to him, and file the same with the assessors of the city, who shall in the preparation of the next assessment-rolls for general city taxes, in a separate column thereof, assess such amount upon such property, and hearings shall be had thereon and the same shall be levied, corrected, enforced and collected in the same manner, by the same proceedings, at

the same time, under the same penalties, and having the same lien upon the property assessed as the general city tax and as a part thereof.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 95.

§ 96. **Superintendent of parks.**—Unless otherwise provided by law, the commissioner of public works shall appoint, to hold office during his pleasure, a superintendent of parks, who shall have, under the direction of the commissioner, the supervision, care, management and control of all the parks of the city and of such portions of the streets as pass through or intersect the same, and of the shade trees of the city. Subject to the direction of the commissioner and to the ordinances of the common council, he shall prescribe the powers and duties of his subordinates and shall, except as otherwise provided by law, superintend the expenditure of all moneys appropriated for park purposes. He shall keep an account of such expenditures and shall approve all claims against the city on account thereof before submission to the comptroller for audit. The superintendent, under the direction of the commissioner, may make all ordinary repairs and improvements upon the parks and such intersecting streets, may employ all laborers needed thereon, and fix their wages, subject to the approval of the commissioner and the board of estimate and apportionment. Except as otherwise provided by law, he shall conduct, with the aid of the corporation counsel, all negotiations and proceedings for the acquisition of lands for park purposes, when the same shall have been authorized by ordinance of the common council and approved by the board of estimate and apportionment. He shall make such rules and regulations, not inconsistent with the ordinances of the common council and laws of the state, as he shall deem proper for the government, management and care of the parks and of the streets in and through the same, and of such other streets, being approaches thereto, as may be designated by ordinance of the common council as parkways, and such rules and regulations, when approved by the common council, shall have the force and effect of city ordinances. The superintendent shall have such other powers and be charged with such other duties, not inconsistent with the provisions of this chapter and the laws of the state, as the commissioner may direct, or as the common council by ordinance may define and prescribe.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 96.

§ 97. **City engineer.**—No person shall be eligible to appointment as city engineer unless he be a civil engineer of at least five years' practical experience in his profession. He shall appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 97.

§ 98. **Duties of city engineer.**—It shall be the duty of the city engineer

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to perform all the ordinary engineering and surveying services in the affairs and business of the city and to supervise, under the general direction of the commissioner of public works, all the work done for the city in which the skill of his profession may be required or useful. He shall, under the direction of the commissioner of public works and the ordinances of the common council, act as the superintendent of public buildings, bridges, docks and wharves. He shall perform such other duties as may be prescribed by the commissioner of public works or by ordinance of the common council. He shall devote his time exclusively to the service of the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 98.

§ 99. **Alteration of grades and names of streets.**—The grade of any street shall not be fixed or established except by direction of the common council. The grade of a street heretofore or hereafter legally established shall not be changed, except by direction of the common council, and except also upon compensation for damages done, to be ascertained in and by the proceedings provided by law for ascertaining damages for lands taken for the opening of streets. The common council shall not alter the name of any street except by ordinance and unless a majority of the owners of property abutting on such street shall petition therefor, in which case a majority vote shall be sufficient. (*Amended by L. 1917, ch. 52, in effect Mch. 15. 1917.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 99.

§ 100. **Apportionment of city's expense of improvements.**—The common council may, by ordinance approved by the board of estimate and apportionment, fix and determine the amount and proportion of the expense which shall be borne by the city at large for opening, altering, grading, curbing or paving a street, or for constructing therein a public sewer which is not less than two feet in diameter. The amount and proportion of the expense of such improvements which shall be borne by the city at large shall be included in the budget and raised by tax the same as other general city charges, or may be borrowed and raised by the city by the issue of bonds in accordance with the provisions of this chapter, as shall be determined by the board of estimate and apportionment. An amount sufficient to pay any such bonds, when due, together with the accrued interest thereon, shall be included in the tax budget and raised by tax the same as other general city charges, and such bonds as they mature, together with the interest thereon, shall be paid out of the moneys so raised by tax. The proportion of the expense which is not borne by the city shall be assessed and charged upon the property affected by such improvement in the form and manner provided by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 100.

§ 101. **Discontinuance of streets.**—Whenever the common council shall

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contemplate the discontinuance of any street, it shall cause a notice to be published for ten days in the official newspaper or newspapers of the city of its intention so to do, and that all persons interested may be heard in reference thereto at a time stated in such notice. If it shall be determined to discontinue the street and any person shall claim to be damaged by such discontinuance, such alleged damages, unless agreed to by the commissioner of public works and approved by the board of estimate and apportionment, must be ascertained and determined in the manner provided by law for ascertaining damages for lands taken for the opening of streets. An ordinance discontinuing any street shall require the affirmative vote of three-fourths of all the members of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 101.

A street recognized as such by the city by making repairs thereon within six years, and traveled and used by persons, although such travel was light, did not cease to be a street. *Delaware, L. & W. R. Co. v. City of Syracuse* (1907), 157 Fed. 700.

§ 102. Streets by prescription.—All lands which shall have been used by the public as a street for twenty years or more continuously shall be a street with the same force and effect as if it had been duly laid out and recorded as such.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 102.

§ 103. Acquisition of lands.—Whenever any real estate or interest therein shall be required for any municipal purpose, except as otherwise provided by law, the commissioner of public works may acquire for the city the necessary land and real estate by gift or by purchase, at a price approved by the board of estimate and apportionment, or by the proceedings specified in the condemnation law, or in the case of property required for the street purposes, by the proceedings provided by law for acquiring and ascertaining damages for property taken for purposes of street openings.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 103.

References.—Power to acquire by condemnation. See also General Municipal Law, § 74. Proceedings for condemnation, Code Civ. Pro. §§ 3357–3382.

Construction.—The fair construction of this section would withdraw from the application of the Condemnation Law proceedings to acquire lands for street purposes. *Matter of Saw Mill River Road* (1912), 152 App. Div. 788, diss. op. Burr, J., p. 791, 137 N. Y. Supp. 825.

Costs.—A property owner whose lands have been condemned in condemnation proceedings under the Condemnation Law, as provided by section 162 of the Charter of the City of Rochester, is entitled to recover from the city the costs of the proceeding to be taxed according to that law. *Matter of City of Rochester* (1905), 181 N. Y. 322, 73 N. E. 1106, revg. (1904), 97 App. Div. 643, 90 N. Y. Supp. 1091.

In a proceeding under the provisions of the supplementary charter of the city of Yonkers (Laws of 1908, chap. 452), to acquire land for the purpose of straightening and widening a public street, the court has authority to award costs upon the confirmation of the report of the commissioners. *Matter of Saw Mill River Road* (1912), 152 App. Div. 788, 137 N. Y. Supp. 825.

ARTICLE VIII.

DEPARTMENT OF CONTRACT AND SUPPLY.

Section 120. Board of contract and supply.

- 121. Proposals.
- 122. Contracts for lighting.
- 123. Secretary of the board; commissioner of supplies.
- 124. Contracts for paving.
- 125. Power to purchase and contract limited.

§ 120. Board of contract and supply.—There shall be a board of contract and supply, composed of the mayor, comptroller, commissioner of public works, corporation counsel and city engineer. Except as otherwise provided by law, it shall be the duty of such board, after public notice and in accordance with regulations to be prescribed by general ordinance of the common council, to let to the lowest bidder, who will give adequate security therefor, all contracts for the performance of any work or for the supply of any material required by or for the use of any officer, board, body or department of the city, in all cases where the expense of such work or materials, or both, shall exceed the sum of two hundred and fifty dollars, unless by ordinance of the common council adopted by a vote of not less than four-fifths of all the members thereof and unanimously approved by the board of estimate and apportionment, it is determined to be impracticable to procure such work or materials or both by contract, in which case said ordinance shall designate the officer, board or department to procure such work or purchase such materials. In case of public emergency involving accident or other injury by which the heating or plumbing of any of the public buildings or any of the fire or water-works apparatus shall become disabled, the commissioner having jurisdiction thereof shall cause repairs thereto to be made without a letting by contract, upon filing with the board of contract and supply a certificate, approved by the mayor, showing such emergency and the necessity for such repairs. The board shall have power to reject all bids or proposals if in its opinion the lowest bid or proposal is excessive. The said notice shall describe the work and materials for which contracts will be let and the day and hour and place of the meeting of the board at which proposals therefor will be opened. Specifications for the performance of any work and for the supply of any materials shall be prepared and set forth with sufficient detail to inform all persons proposing to bid therefor of the nature of the work to be done and of the materials to be supplied, and written or printed copies thereof shall be delivered to all applicants therefor. Every contract for a public improvement shall be based upon an estimate of the whole cost thereof, including all expenses incidental thereto and connected therewith, to be furnished by the proper officer, board or department having charge of such improvements. No bid or

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proposal shall be received or contract awarded, other than for a local improvement or work to be performed by the city, which involves the construction or maintenance of any structure, erection, obstruction or excavation within, under, over, along or upon any street or public place within the city, unless the person to whom such contract shall be awarded shall have a franchise permitting the same. (*Amended by L. 1917, ch. 18, in effect Feb. 26, 1917.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 120.

References.—Contracts by municipal corporation not to be assigned without consent. General Municipal Law, § 86. Separate specifications for plumbing, heating and ventilating, *Id.* § 88.

Construction.—Courts should give enactments of this kind the most fair and liberal interpretation. *Grace v. Forbes* (1909), 64 Misc. 130, 118 N. Y. Supp. 1062.

Sections 120, 121 and 124 of this law should be construed together as vesting in the board of contract and supply the same right to reject all bids and readvertise in the case of paying contracts as of other contracts required to be let to the lowest bidder. The provision of section 124 that the contract shall be awarded "*for the kind of pavement or material so designated by the property owners or common council as aforesaid, and to the lowest bidder for doing the work with the kind of pavement or material so designated,*" does not deprive the board of the power given them in the prior sections to reject all bids and readvertise at any time prior to the formal action of the board in awarding the contract. Provisions reserving the right to reject all bids are not made for the benefit of contractors or bidders upon public works, and are not available for them to compel the execution in their favor of such contracts by city officials. They are intended for the benefit and protection of the public. *People ex rel. Gaffey v. Forbes* (1912), 151 App. Div. 245, 135 N. Y. Supp. 747. See *Rept. of Atty. Genl.* (1913), Vol. 2, p. 565.

Purpose.—This section was enacted in the public interest, is based on motives of economy and is a bar against the fraud which results from favoritism and jobbing by public officers in making contracts for the public service. So where a contract between a city and a corporation was let in accordance with proofs and specifications so prepared that all possibility of bidding was confined to such corporation, although there was another corporation engaged in the same business, such contract is void. *Grace v. Forbes* (1909), 64 Misc. 130, 118 N. Y. Supp. 1062.

Application.—The commissioners of common schools of the city of Utica have authority under section 13 of chapter 137 of the laws of 1842 to contract for the repair of existing or the erection of new schoolhouses. Said statute has not been repealed or superseded by subsequent enactments. *McBride v. Ashley* (1916), 174 App. Div. 650, 160 N. Y. Supp. 406, *affg.* (1915), 91 Misc. 585, 154 N. Y. Supp. 1010.

Right to reject bids.—Where pending the formal acceptance by the board of contract and supply of the city of Yonkers, a city of the second class, of the lowest bid for a street improvement and the execution of the formal contract with the lowest bidder, the city authorities rescind the ordinance under which the bids had been invited with a *bona fide* intention of carrying out the proposed improvement in a cheaper form than that originally contemplated, a writ of peremptory mandamus will not issue at the suit of the lowest bidder to compel the execution of a contract with him, particularly where the right to reject any and all bids was expressly reserved by the charter and by the advertisement for the bids. *People ex rel. Fisher v. Lennon* (1911), 147 App. Div. 640, 132 N. Y. Supp. 567, appeal dismissed (1912), 206 N. Y. 691, 99 N. E. 1115.

Sufficiency of specifications.—Where specifications for a hospital building contained a provision that if rock were encountered in excavating the contractor must state

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In his bid the extra cost per cubic yard of removing same, there is no failure to comply with this section when the relative cost of removing the rock was insignificant. *People ex rel. Lynch v. Lennon* (1911), 147 App. Div. 537, 132 N. Y. Supp. 620.

Lowest bidder.—Where specifications for a building required the bidder to state the cost of removing rock, if encountered, one who bid for the entire work asking no extra compensation for removing the rock is entitled to the contract as against one whose bid for the structure, although twelve dollars less, was actually larger by reason of the claim of extra compensation for excavating the rock. *People ex rel. Lynch v. Lennon* (1911), 147 App. Div. 537, 132 N. Y. Supp. 620.

Remedy of lowest bidder.—Where the lowest bidder on a municipal contract has no remedy at law for the refusal of the authorities to execute a contract which they have drawn up awarding the work to him, he is entitled to a writ of mandamus compelling them to execute it. *People ex rel. Lynch v. Lennon* (1911), 147 App. Div. 537, 132 N. Y. Supp. 620.

Section cited.—*Brodt v. City of Yonkers* (1916), 175 App. Div. 455, 456, 161 N. Y. Supp. 1023.

§ 121. **Proposals.**—No contract shall be let, except after the receipt of sealed bids or proposals therefor, and no bid or proposals shall be received at any time other than at a regular meeting of said board, and unless they conform to the rules of the board and the general ordinances of the common council. All bids or proposals must be indorsed with the title of the work or materials to which they relate, the name of the bidder and his residence. It shall be the duty of each member of the board to be present at the time and place mentioned in the public notice for the receipt and opening of bids or proposals, and such meetings shall be open to the public. After all the bids or proposals have been presented, but not until one-half hour after the time stated in the public notice for holding the meeting, all bids or proposals shall be opened by some member of the board or by its secretary, publicly and in the presence of the bidders and other persons there present, and an abstract of all of such bids or proposals, with the prices and security offered, shall be transcribed in a book kept for that purpose, without any change, correction or addition whatever. A majority of the board need not be present when such bids or proposals are opened. The board may reject all bids or proposals received at any meeting and advertise again for new bids or proposals to be received at another meeting as above prescribed. No person submitting, or on whose behalf a bid or proposal is submitted, nor the principal or sureties on any bond or security accompanying the same, shall have the right to withdraw or cancel any such bid, proposal, or bond until the board shall have awarded the contract for which such bid or proposal is made, and such contract shall have been duly executed.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 121.

Section cited.—*Brodt v. City of Yonkers* (1916), 175 App. Div. 455, 456, 161 N. Y. Supp. 1023.

§ 122. **Contracts for lighting.**—All municipal lighting shall be supplied pursuant to contract therefor, awarded by the board of contract and supply

as herein provided. Such contract shall cover and include the lighting and supplying of the lamps and the oil, gas, electric current, the cleaning, repair and renewal of the lamps and all the materials required in the use and care thereof. No bid or proposal for any such contract shall be received, nor contract awarded therefor, less the bidder shall, prior to the making of such bid or proposal, have a franchise under the authority of which the proposed contract can be performed. No contract shall be advertised for or entered into for a period exceeding five years. Each bidder shall be required to furnish with each bid or proposal a certified check, payable to the order of the city treasurer, in such sum as the board of contract and supply shall prescribe, but not less than ten thousand dollars. Such sum shall be forfeited to and become the absolute property of the city in case the bidder depositing the same shall be awarded the contract and shall not execute the same and furnish a bond for the faithful performance of such contract, in the penal sum of not less than fifty thousand dollars, within thirty days after the award of such contract. Such certified check shall be returned to the bidder if the contract be not awarded to him, or, if awarded, he shall have executed and furnished the contract and required bond.

The common council may by ordinance establish a special lighting district or districts for the purpose of ornamental street lighting, and from time to time may alter or extend the same. The board of contract and supply may contract for lighting any such district or districts so established or extended, as such board may deem proper or expedient. Any contract so entered into shall be in conformity with the provisions of this section, except that the bond to be given for the faithful performance of the contract shall be in such amount as the board of contract and supply shall determine. The amount of any contract that may be entered into for such special lighting pursuant to the provisions of this act, shall be assessed, levied and collected upon and between the taxable property in said city and district or districts respectively, in the same manner, at the same time and by the same officers as the city taxes, charges or expenses of said city are now assessed, levied and collected. The common council shall, by ordinance, approved by the board of estimate and apportionment, apportion the expense that shall be borne by the taxable property in such special lighting district or districts, and the city at large; but, in no event shall the taxable property in any such special lighting district or districts, be charged with less than fifty per centum of such charges or expenses. (*Amended by L. 1913, ch. 70.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 122.

§ 123. **Secretary of the board; commissioner of supplies.**—The board of contract and supply shall appoint a secretary to hold office during its pleasure, whose duty it shall be to keep a full journal of all the proceedings of the board and to perform such additional duties as may be required

by the board, or by law or ordinance of the common council. Where any work or repairs needed to be done, or materials or supplies to be furnished for any office, court, board or department shall not exceed two hundred and fifty dollars in cost, the board of contract and supply may by general or special rule authorize the commissioner of public works, or the commissioner of public safety, or the secretary of the board, or any of them, to give written orders therefor and purchase the same. No materials or supplies shall be purchased for, or delivered by or upon the order of the commissioner to any officer, board, court, body or department of the city, except upon the requisition in writing from the officer, board, body or head of the department for which the same are required. The commissioner shall require a receipt in writing from each officer, board, body or head of the department for all supplies delivered to him or it by the commissioner or on his order, and he shall approve, in writing, all claims for any such materials or supplies purchased by him, before the same shall be presented to the comptroller for audit.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 123.

Section cited.—*Brodt v. City of Yonkers* (1916), 175 App. Div. 455, 456, 161 N. Y. Supp. 1023.

§ 124. **Contracts for paving.**—The common council shall, by general ordinance, prescribe, approve and adopt the materials to be used in paving, repaving, repairing, surfacing or resurfacing the streets and public places of the city, and fix the standard of excellence and test required for each such material. The city engineer shall prepare standard specifications, in accordance with such ordinance, for the performance of the work involved in such improvements with each kind of materials so prescribed, approved and adopted therefor. Whenever the common council shall determine to make any such improvement, and the proceedings provided by law as preliminary thereto shall have been taken, the board of contract and supply shall advertise for proposals for the furnishing of the materials and the performance of the work involved in such improvements, and specifications shall be prepared and proposals shall be invited, pursuant to the provisions of this chapter, for the construction of such improvement with each kind of paving material so prescribed, approved and adopted by the common council. In case the expense of any such improvement is to be assessed upon the property abutting upon the street, or part thereof, to be improved and more than one kind of material is prescribed, approved or adopted therefor, the secretary of the board shall, within one week after proposals for such work have been received and opened, cause to be published in a daily official paper for four successive days, exclusive of Sunday, a notice containing a summary statement of all such proposals. A majority of said property owners, owning not less than one-third of the feet front of property abutting on such street, exclusive of city property, may present to the board of contract and supply a petition or other writing

designating the general kind of pavement or material to be used in making said improvement. If no part of the expense of such improvement is to be assessed upon the property abutting upon said street, or if such expense is to be so assessed, but the property owners shall not have made a designation or shall have made more than one designation, as herein provided, the common council shall, not later than at its next regular meeting after the expiration of ten days from the service of such notice, designate the kind of pavement or material to be used in making such improvement, and the contract for such improvement shall be awarded for the kind of pavement or material so designated by the property owners or common council as aforesaid, and to the lowest bidder for doing the work with the kind of pavement or material so designated. In case, however, two-thirds of the owners of property, owning at least three-fifths of the linear feet fronting upon said street, or part thereof, shall designate a particular make, style or brand of the kind of pavement or material to be used in making such improvement, the contract therefor shall be awarded to the lowest bidder for such make, style or brand of such kind of pavement or material, although the same is not the lowest bid for such kind of pavement or material so designated. Where a street surface railroad shall be laid in any street which it is determined to improve as herein provided, the proposals and contract for such improvement shall include the improvement of the space between the tracks of such street surface railroad, the rails of such tracks and two feet in width outside of such tracks, and the work of improvement in such space shall be done at the same time and under the same supervision as the work of improvement of the remainder of such street. After opportunity to be heard has been given to the company owning or operating such street surface railroad, the board of contract and supply may prescribe the materials to be used in improving such street within the railroad space above described. The entire expense of the improvement within such railroad space shall be assessed and levied upon the property of the company owning or operating such railroad and shall be collected in the same manner as other expenses for local improvements are assessed, levied and collected in the city; and an action may also be maintained by the city against the company in any court of record for the collection of such expense and assessment. (*Amended by L. 1913, ch. 141.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 124.

Application.—The supplemental charter of Schenectady (chapter 756 of the Laws of 1907) relating to paving streets in that city provides a complete system therefor, and the provisions of this section, prescribing certain requirements for the selection by the abutting property-owners of a particular make, style or brand of a kind of pavement or material above the cost of another make, style or brand of the same kind, are not applicable to Schenectady. *Union Paving Co. v. Board of Contract* (1911), 74 Misc. 646, 134 N. Y. Supp. 740. See *Peo. ex rel. Gaffey v. Forbes* (1912), 151 App. Div. 245, 135 N. Y. Supp. 747.

While the charter of the city of Yonkers empowers not less than one-third of

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a majority abutting upon a street which is to be repaved to petition the municipal board of contract and supply to construct a pavement of a certain character, the provisions of the statute must be complied with and the petition be made to the board of contract and supply. Hence, a petition which was never served upon said board or its clerk, but was merely handed to the city clerk who had no relation to the board of contract and supply, and served only the common council, to which body he communicated the petition, is insufficient to require the municipal authorities to let a contract for the particular kind of pavement petitioned for, and a taxpayer has no standing to maintain an action to restrain the municipal authorities from carrying out a contract which has been duly let for a different kind of pavement. *Brodt v. City of Yonkers* (1916), 175 App. Div. 455, 161 N. Y. Supp. 1023.

§ 125. **Power to purchase and contract limited.**—No person shall have power to make any purchase or contract any debt for which the city shall be liable unless specifically authorized by the provisions of this chapter.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 125.

ARTICLE IX.

DEPARTMENT OF PUBLIC SAFETY.

- Section 130. Commissioner of public safety; appointees.
- 131. Duties of commissioner.
 - 132. Deputy commissioner.
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§ 130. **Commissioner of public safety; appointees.**—The commissioner

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of public safety shall be the head of the department of public safety. He may appoint, to hold office during his pleasure, a deputy, a health officer and a superintendent of buildings. Whenever a vacancy occurs in the office of the chief of police or chief of the fire department, the commissioner of public safety, shall appoint, in his discretion, a person deemed by him to be suitable and competent to fill the same. The chief of police and chief of the fire department shall each hold office during good behavior, or until permanently incapacitated or unfit to discharge his duties. The commissioner may appoint such other subordinates as may be prescribed by the board of estimate and apportionment to hold office, except as otherwise provided by law, during his pleasure. In case of the absence or disability of the commissioner or a vacancy in the office, the deputy shall discharge the duties of the office until the commissioner returns, his disability ceases or the vacancy is filled. Before entering upon the discharge of the duties of their respective offices, the commissioner, deputy, health officer, superintendent of buildings, chief of police and chief of the fire department shall each execute and file with the city clerk an official undertaking in such penal sum as may be prescribed by the common council. (*Thus amended by L. 1909, ch. 573.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 130.

References.—Oath of office, Public Officers Law, § 10. Failure to take, Penal Law, §§ 1820, 1821; Public Officers Law, § 15. Vacancies generally, Id. § 30. Bonds generally, Id. §§ 11-13. Acting without filing, Penal Code, §§ 1820, 1821; Public Officers Law, § 15.

The act of appointing policemen and firemen is not in itself a state function. *Olmstead v. Meahl* (1916), 219 N. Y. 270, 278, 114 N. E. 393.

§ 131. Duties of commissioner.—The commissioner of public safety shall have cognizance, jurisdiction, supervision and control of the government, administration, disposition and discipline of the police department, fire department, buildings department and health department, and of the officers and members of said departments, and shall possess and exercise fully and exclusively all powers and perform all duties pertaining to the government, maintenance and direction of said departments, and the apparatus and property thereof and buildings furnished therefor, and shall have the general direction and supervision of the expenditure of all moneys appropriated to said departments. He shall possess such other powers and perform such other duties as may be prescribed by the law or by ordinance of the common council. (*Thus amended by L. 1909, ch. 573.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 131.

Powers.—Office of commissioner is principally administrative and he is not expressly given authority to enact general ordinances of legislative nature. *Harding v. Cavanaugh* (1915), 91 Misc. 511, 514, 155 N. Y. Supp. 374.

§ 132. Deputy commissioner.—The deputy commissioner shall have authority to administer oaths and take evidence, affidavits and acknowledgments in all matters and proceedings pertaining to the department. He

shall have general supervision over the records of the department and its officers and shall perform such other duties as may be prescribed by the commissioner or by law or by ordinance of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 132.

§ 133. Rules, orders and regulations.—The commissioner of public safety shall make, adopt and enforce such reasonable rules, orders and regulations, not inconsistent with law, as may be reasonably necessary to effect a prompt and efficient exercise of all the powers conferred and the performance of all duties imposed by law upon him or the department under his jurisdiction. He is authorized and empowered to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the police and fire departments, and for the hearing, examination, investigation, trial and determination of charges made or prepared against any officer or member of said departments for neglect of official duty or incompetency or incapacity to perform his official duties or some delinquency seriously affecting his general character or fitness for the office, and may, in his discretion, punish any such officer or member found guilty thereof by reprimand, forfeiting and withholding pay for a specified time,* suspension during a fixed period or dismissal from office; but no officer or member of said departments shall be removed or otherwise punished for any other cause, nor until specific charges in writing have been preferred against and served upon him, and he shall have been found guilty thereof, after reasonable notice and upon due trial before said commissioner in the form and manner prescribed by law and the rules and regulations of the department.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 133.

§ 134. Constitution of police and fire departments.—The police and fire departments shall, as to their membership and component parts, remain as now constituted until the same shall be changed by action of the common council. The common council has power at all times by ordinance to determine the number of officers and members of each of said departments and the classes and grades into which they shall be divided, except that it shall not have the power to diminish the number of the members of either of said departments as now fixed. The number of officers or members of either of said departments shall not be increased without the approval of the board of estimate and apportionment. The common council may pass ordinances not inconsistent with law for the government of the police and fire departments, and regulating the powers and duties of their officers and members. The commissioner shall appoint, as vacancies in said department occur, all officers and members thereof, and classify and apportion them into grades to conform to such ordinances.

* So in original.

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Source.—Second Class Cities L. (L. 1906, ch. 473) § 134.

Police matrons.—General City Law, §§ 90-97, ante.

§ 135. **Membership.**—No person shall be appointed to membership in the police or fire departments of the city, or continue to hold membership therein, who is not a citizen of good moral character, who has ever been convicted of a felony, who can not understandingly read and write the English language, and who shall not have resided in the city during the two years next preceding his appointment. The commissioner shall make all appointments, promotions and changes of status of the officers and members of the police and fire departments in accordance with the provisions of the civil service law of the state, except as otherwise provided herein. In making promotions, seniority and meritorious service in the department, as well as superior capacity, as shown by competitive examination, shall be taken into account. Individual acts of bravery may be treated as acts of meritorious service, and the relative weight therefor shall be fixed by the municipal civil service commission. No member of the police or fire departments shall hold any other office nor be employed in any other department of the city government.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 135.

§ 136. **Terms of office.**—All members of the police and fire departments, subject to the power of removal hereinafter specified, shall hold their respective offices during good behavior or until by age or disease they shall become permanently incapacitated to discharge their duties.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 136.

§ 137. **Discipline.**—If a charge may be made by any person against any officer or member of the police or fire departments that he has been negligent or derelict in the performance of his official duties, or is incompetent or without capacity to perform the same or is guilty of some delinquency seriously affecting his general character or fitness for the office, the charge must be in writing, in the form prescribed by the rules and regulations of the commissioner of public safety, and a copy thereof must be served upon the accused officer or member. The commissioner shall then proceed to hear, try and determine the charge. The accused shall have the right to be present at his trial, and to be heard in person and by counsel and to give and furnish evidence in his defense. All trials shall be open to the public. The commissioner has power to issue subpoenas, in his name, to compel the attendance of witnesses, and shall upon the oral application of the accused issue a subpoena on the behalf of the accused, leaving the space for the names of his witnesses blank that he may fill in their names, upon any proceeding authorized by the rules and regulations of the department, and any person served with a subpoena is bound to attend in obedience to the command thereof; and the commissioner shall compel the attendance of witnesses and compel them to testify in the same

manner as in the case of any officer or board authorized by law to issue subpoenas and take testimony. If the accused shall be found guilty of the charge made against him, the commissioner may punish him by reprimand, by forfeiting and withholding pay for a period not to exceed thirty days, by suspension without pay during a period not to exceed thirty days, or by dismissal from office. At any time within one year after the date of dismissal, any officer or member dismissed may make application to the commissioner for reinstatement. Such application must be in writing and contain a release of the city from all claims for back compensation. The commissioner may, in his discretion, rehear and redetermine the charges and reinstate such officer or member, with or without an allowance of the whole or a part of the time since such dismissal to be applied on his time of service in the department, or may affirm such dismissal. At any time within one year after this chapter takes effect or within one year after the date of resignation, an officer or member who has resigned may make application to the commissioner for reinstatement and the commissioner may, in his discretion, reinstate him, but the time between the date of resignation and reinstatement shall not apply on his time of service in the department. (*Amended by L. 1910, ch. 266.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 137, as amended by L. 1908, ch. 252.

When policeman unfit.—Where police officer left his post and assaulted a woman at the rear door of her place of employment. *Nolan v. Cole* (1913), 157 App. Div. 44, 141 N. Y. Supp. 652. Failing to report the circumstances attending his leaving his beat while on duty, in violation of rules and regulations. *Matter of Quay v. Wege* (1913), 158 App. Div. 120, 142 N. Y. Supp. 618. Making a unprovoked assault of a serious character upon a citizen. *Horan v. Fleming* (1911), 143 App. Div. 131, 127 N. Y. Supp. 654.

When fireman not unfit.—The fact that a city fireman while off duty entered a saloon and there used abusive language to a person therein does not render him unfit to act as a fireman. *Matter of Van Order* (1913), 157 App. Div. 4, 141 N. Y. Supp. 582.

Decision of commissioner conclusive.—It is competent for the legislature to provide that the decision of the commissioner of public safety dismissing a member of the police force, upon charges preferred against him, should be "final and conclusive and not subject to review by any court." Such provision is not unconstitutional because it deprives policemen who are removed of their rights in pension funds. The appointment of a policeman under the Syracuse charter does not convey a vested right in a pension fund created pursuant to such charter. *People ex rel. Miller v. Peck* (1902), 73 App. Div. 89, 76 N. Y. Supp. 328. Decision under former law.

Office of police surgeon.—The provisions of this section authorize the commissioner of public safety to dismiss a police surgeon whenever in his judgment such officer has been guilty of charges preferred against him. The office of police surgeon having been created by statute, it is competent for the legislature to provide that the term of an incumbent may be determinable upon any condition which it sees fit to prescribe. *People ex rel. Graveline v. Ham* (1901), 59 App. Div. 314, 69 N. Y. Supp. 283.

§ 138. **Appeal from determination of commissioner.**—In case any such

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officer or member is aggrieved by the determination of the commissioner on any trial of charges, as specified in the preceding section, he may, within thirty days after the rendering of such determination, take an appeal therefrom on questions of law to the appellate division of the supreme court. An appeal taken, as prescribed herein, shall be perfected by the service of notice of appeal upon the commissioner. He shall, within ten days thereafter, make and file with the county clerk of the county in which the city is situated a complete return of the proceedings on such trial. For the use of the parties and the court on such appeal, the appellant shall cause a certified or stipulated copy of said return to be printed and issued and all the rules and statutes concerning the correction and service and use of a printed case on appeal shall as far as appropriate be applicable to the correction service and use on appeal of said records. (*Amended by L. 1910, ch. 266.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 138.

Findings of fact by commissioner of public safety conclusive.—As under the statute an appeal from a determination of a commissioner of public safety can be had only on questions of law, the findings of fact by the commissioner cannot be reviewed. *Matter of Van Order* (1913), 157 App. Div. 4, 141 N. Y. Supp. 582.

§ 139. **Exemptions.**—No member of the police or fire department shall be liable to military or jury duty or to arrest on criminal or civil process while on duty.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 139.

§ 140. **Pension funds.**—The provisions of law governing the establishment and maintenance of pension funds for the benefit of members of the police and fire departments shall be unimpaired by this chapter. The mayor, comptroller and commissioner of public safety and their successors in office shall constitute the trustees of each such fund and shall have the care, control, management and distribution thereof.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 140.

§ 141. **Chief of police.**—The chief of police shall have the power and it shall be his duty to enforce all rules and regulations of the commissioner of public safety relating to the police department; to commit any person charged with a criminal offense until an examination shall be had before the proper magistrate; to administer oaths and take affidavits in respect to all matters pertaining to his official duties, and to perform such other duties as may be prescribed by law, the commissioner of public safety, or ordinance of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 141.

§ 142. **Powers and duties of members of police department.**—The members of the police department, other than surgeons, in criminal matters have all the powers of peace officers under the general laws of the state, and they shall also have the power and it shall be their duty to arrest any person found by them violating any of the penal ordinances of the

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city or laws of the state, and to take such person before the proper city magistrate. Such person shall be dealt with in the same manner as if he had been arrested upon a warrant theretofore duly issued by such magistrate. They shall report violations of law and ordinances coming to their knowledge in any way under regulations to be prescribed by the commissioner of public safety. They shall also have, in every other part of the state, in criminal matters all the powers of constables and any warrant for search or arrest issued by any magistrate of the state may be executed by them in any part of the state according to the tenor thereof without indorsement. They shall possess such other powers and perform such other duties as may be provided by law or ordinance of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 142.

§ 143. **Service of process.**—All criminal process for any offense committed within the city, and all process to recover or to enforce any penalty for the violation of any city ordinance issued out of any court or by any magistrate within the city, and every process, subpoena or bench warrant issued by the district attorney of the county in which the city is situated, relating to any offense committed within the city, and every process, subpoena or warrant issued by any coroner of such county in any inquest held in the city relative to the death of any person, may be served by any member of the police department.

Source.—Second Class Cities L. (L. 1906, ch. 573) § 143.

Liability of city.—Upon principle and authority as well as under this section a city, in the appointment and maintenance of a police force, exercises a governmental function, so that it is not responsible for the unlawful or negligent acts of policemen in the discharge of their duties; the maintenance of a building as police headquarters being a necessary and proper element of the maintenance of the police force, the city is not liable for injuries sustained by a mechanic on his way to repair the roof of such police headquarters, which injuries were caused through the negligence of a police telegraph operator in leaving open the door of an elevator shaft. *Wilcox v. City of Rochester* (1907), 190 N. Y. 137, 82 N. E. 1119, 17 L. R. A. (N. S.) 741, revg. (1906), 114 App. Div. 734, 99 N. Y. Supp. 1020.

§ 144. **Political activity prohibited.**—No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention except in the performance of duty relating to his position as such officer or member. He shall not solicit any person to vote at any political primary or election, nor challenge, nor in any manner attempt to influence any voter thereat. He shall not be a member of any political committee. Any officer or member violating any provision of this section shall be dismissed from office.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 144.

§ 145. **Department of health.**—The commissioner of public safety shall exercise all the powers and be charged with all the duties conferred upon or required of local boards of health by the laws of this state, so far as

the same pertain to cities, with the exceptions, limitations and additions herein contained.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 145.

References.—Powers of local boards of health, Public Health Law, §§ 20-29.

Application.—Sections 145, 146, 147, 148 and 154 modify section 25 of the Public Health Law. Where the common council of a city adopts an ordinance giving the health officers of the city wider powers than those given in the Public Health Law, the ordinance will prevail and will protect all officers acting thereunder. Thus, one quarantined under such ordinance by reason of the prevalence of an infectious and contagious disease cannot recover damages for unlawful restraint. *Crayton v. Larabee* (1917), 220 N. Y. 493, 116 N. E. 355, revg. (1914), 162 App. Div. 934, 147 N. Y. Supp. 1005.

§ 146. Health officer.—No person shall be eligible to appointment as health officer unless he shall be a physician and surgeon duly licensed to practice under the laws of this state, and who has practiced as such for at least ten years. The health officer shall possess such powers and perform such duties as shall be delegated to or prescribed by the commissioner of public safety or by ordinance of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 146.

References.—Obstructing health officer, a misdemeanor, Penal Law, § 1741. Failure to comply with order of health officer, Penal Law, § 1740.

§ 147. Deputy health officer.—The health officer by the authority and under the direction of the commissioner of public safety may appoint a deputy, to hold office during his pleasure. He may, when authorized by the commissioner and subject to the approval of the board of estimate and apportionment, appoint such other assistants and employ such health and sanitary experts as may be required to carry into effect the powers, decisions, orders and directions vested in said commissioner and health officer by this chapter and otherwise by law. The compensation of such deputy, assistants and experts shall be fixed by the commissioner, subject to the approval of the board of estimate and apportionment.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 147.

§ 148. Appeals from orders of health officer.—Any person aggrieved by an order, decision or direction of the health officer, may appeal therefrom to the commissioner, who may affirm, reverse or modify the order, decision or direction appealed from. Such appeal must be made by serving on the health officer a written notice of appeal within two days, Sundays and legal holidays excepted, or within such further time as shall be allowed by the commissioner after the appellant receives notice of the order, decision or direction appealed from. Within two days after receiving such notice of appeal, Sundays and legal holidays excepted, the health officer shall make a written return to the commissioner of the facts and evidence on which such an order, decision or direction is founded. Upon receipt of such return, or if no return be made within the time

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specified, the commissioner shall forthwith proceed to hear and determine the matter. Upon such appeal the commissioner need not be confined to the evidence contained in the return but in his discretion may take additional evidence. Until the decision of the appeal be made, the order, decision or direction appealed from shall be suspended. In case of failure to sustain the appeal, the commissioner may, in his discretion, impose costs not exceeding ten dollars upon the appellant.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 148.

§ 149. **Inspection of public buildings.**—The health officer and superintendent of buildings may inspect and advise as to the proper heating, ventilation and drainage of public buildings under the control of the city or any of its departments, and in case any such building is in use or in process of erection without, in the opinion of either, proper arrangements for heating, ventilation or drainage, he shall, subject to the right of appeal herein provided, stop the use or the erection of such buildings, direct such arrangements to be made and restrain further work upon the building until they are made. (*Thus amended by L. 1909, ch. 573.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 149.

§ 150. **Approval of plans for sewers and drains.**—All plans for sewers and drains shall be submitted to the health officer for his approval before contracts are let for the construction of the same, and, in case he shall disapprove the same, such sewer and drains shall not be constructed unless, on appeal to the commissioner, he shall approve the same. The health officer has power, subject to the right of appeal herein provided, to stop the construction or use of drains and sewers which are not properly constructed or properly used, or which are not in accordance with plans previously approved and adopted.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 150.

§ 151. **Health physicians.**—The commissioner of public safety shall divide the city into not more than twelve districts to be known as health districts, and shall file with the city clerk a written designation of such districts; and may by like written designation alter the same from time to time. He shall appoint, to hold office during his pleasure, a health physician for each of such districts who shall perform such duties as the commissioner may direct or prescribe. Their compensation shall be fixed by the commissioner, subject to the approval of the board of estimate and apportionment. The deputy health officer and health physicians shall render medical services to indigent sick persons under the direction of the health officer and of the proper poor officer of the city; but no sick person shall be maintained at any institution at the expense of the city unless the overseer of the poor shall certify that such person is an indigent person and is a proper city charge. This section shall not be construed

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as applying to almshouses, hospitals or other public institutions which are provided with a regularly appointed medical and surgical staff.

Source.—Second Class Cities L. (L. 1906, ch. 573) § 151.

§ 152. **Actions to restrain nuisances.**—The commissioner is authorized, by and with the advice and consent of the corporation counsel, in the name of the city, to maintain actions to restrain the threatened performance of any act contrary to his orders, directions, decisions or ordinances or those of the superintendent of public buildings or any violation of the rules and regulations of the department of buildings and to restrain and abate nuisances; and for the purpose of obtaining a temporary injunction in any such action no undertaking shall be required. (*Thus amended by L. 1909, ch. 573.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 152.

Application.—The commissioner of public safety may bring and prosecute actions to restrain nuisances. *Hamlin v. Bender* (1915), 92 Misc. 16, 155 N. Y. Supp. 963, *affd.* (1916), 173 App. Div. 996, 159 N. Y. Supp. 1117.

§ 153. **Duty in case of peril to public health.**—In case of great and imminent peril to the public health of the city, by reason of impending pestilence, it shall be the duty of the commissioner, with the sanction of the common council, if it be practicable to convene that body for prompt action, or if not, when approved by the board of estimate and apportionment, to take such measures, and to do, order, or cause to be done, such acts, and to make such extraordinary expenditures in excess of the sum appropriated to the department of health as in this chapter provided, for the preservation and protection of the public health, as he may deem necessary and proper. Such peril to public health shall be deemed to exist only when and for such period as the commissioner and the board of estimate and apportionment, by unanimous vote, shall determine.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 153.

§ 154. **Public health law applicable.**—The public health law, so far as it pertains to cities, shall be applicable to cities of the second class, except as herein expressly modified.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 154.

See *Crayton v. Larabee* (1917), 220 N. Y. 493, 116 N. E. 355.

§ 155. **Subordinates.**—The superintendent of buildings may appoint such subordinates as may be prescribed by the board of estimate and apportionment to hold office during his pleasure, and who shall receive such compensation as shall be fixed by said board. (*Added by L. 1909, ch. 573.*)

§ 156. **Duties of superintendent.**—In addition to the duties of the superintendent of buildings prescribed herein, or otherwise by law, the common council shall by ordinance prescribe his duties, and he shall have such

power and authority in regard to the supervision and inspection of the erection, construction or alteration of buildings and other structures as shall be conferred by ordinance, not inconsistent with the other laws of the state. The common council shall also have power to establish by ordinance, and from time to time amend, a "building code," providing for all matters concerning, affecting or relating to the construction, alteration, repair or removal of buildings and structures heretofore or hereafter erected; but no ordinance amending, repealing or modifying such building code or any provision thereof shall be passed by the common council until notice of the proposed ordinance shall have been published for at least ten days in the official paper or papers of the city prior to action thereon. (*Added by L. 1909, ch. 573.*)

Residence districts.—Common council has no power to set aside a residence district. *People ex rel. Lankton v. Roberts* (1915), 90 Misc. 439, 153 N. Y. Supp. 143, *affd.* (1915), 171 App. Div. 890, 155 N. Y. Supp. 1133.

§ 157. **Application of chapter limited.**—Where, by special or local laws affecting the city, a superintendent of buildings is provided for, the provisions of this chapter shall not affect the manner of appointment, tenure or term of office, removal or salary or compensation of such superintendent, or impair any of the powers or duties possessed by or conferred upon him under or by virtue of such special or local laws. (*Added by L. 1909, ch. 573.*)

L. 1909, ch. 573, § 3.—All acts or parts of acts, general or special, in so far as inconsistent with the provisions of this act are hereby repealed; but such repeal shall not affect or impair any act done or right accruing, accrued or acquired, or penalty incurred prior to the time of the taking effect of this act under or by virtue of any law so repealed; but the same may be asserted or enforced as fully and to the same extent as if such law had not been so repealed.

ARTICLE X.

DEPARTMENT OF ASSESSMENT AND TAXATION.

Section 160. Powers and duties of assessors.

161. Description of premises.

162. Rebates and deficiencies.

163. Assessment not invalidated by irregularities.

164. Right to review assessment or tax for local improvement limited.

165. Procedure on review.

166. Consolidation of separate proceedings.

167. State lands.

§ 160. **Powers and duties of assessors.**—The assessors shall appoint, to hold office during their pleasure, such assistants or subordinates as the board of estimate and apportionment shall prescribe. The assessors shall possess all the powers conferred, be subject to all the obligations imposed and perform all the duties appertaining to the office of assessors in the

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towns of the state in reference to the assessment of property within the city, except as otherwise provided by law. They shall perform all the duties now provided by law in reference to the assessment of property for the purpose of levying taxes and assessments for local improvements, imposed according to law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 160.

References.—Oath of office, Public Officers Law, § 10. Failure to take, Penal Law, §§ 1820, 1821; Public Officers Law, § 15. Vacancies generally, Id. § 30.

Section cited.—People ex rel. Troy Gas Co. v. Hall (1911), 203 N. Y. 312, 319, 96 N. E. 933.

§ 161. **Description of premises.**—In the assessment of any lands in the city for any purpose, it shall be sufficient to state the name of one of the owners of such lands if the owner or owners or any of them be residents of the city and known to the assessors; if the owner or owners be unknown to the assessors or if they be nonresidents and the ownership is unknown to the assessors, then the assessment may be designated unknown, and there shall be stated the number of the lot and the block, if subdivided into lots and blocks and so designated upon the city map last adopted by the common council, or the number of the lot or farm lot, if not so subdivided into blocks and lots and so designated, and also the street and number of any building thereon; but if the land be vacant or the building thereon be not numbered, then the name of the street on which it fronts and a brief description of the premises shall be given. In case no inhabited building be on the land and the residence of the owner be unknown, such owner may be designated as unknown. No assessment hereafter made in said city shall be held to be invalid because the same may be made out in terms against owner or owners unknown or the estate of a deceased person, naming such person, or the executor, administrator, heirs or devisees of a deceased person, naming such person, or any of them or against a company or a firm name, or against a person in whom is the record title, though not the actual title of the property, or for any cause arising through ignorance or mistake as to the names of the owner or owners of the property assessed, whether individually or a corporation, provided such property is sufficiently described on the assessment-rolls to reasonably identify and indicate to a person familiar with the same the particular property which it was intended to assess. Every assessment-roll shall be considered as referring to the last adopted map, unless it be otherwise stated therein.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 161.

§ 162. **Rebates and deficiencies.**—In all cases of assessment for improvements the assessors shall include in the apportionment all the expenses connected with or which were incident to the making of the improvement and assessment. Whenever the amount apportioned shall exceed the actual cost of the improvement, including all expenses connected

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therewith or incidental thereto, the comptroller shall certify the amount of the surplus to the assessors and they shall thereupon declare a rebate and the excess shall be refunded pro rata to the persons who paid their assessments. If the amount assessed for any improvement shall be insufficient to cover the cost of the improvement, including all expenses connected therewith and incidental thereto, the comptroller shall certify the amount of the deficiency to the common council and assessors, and the common council and assessors shall forthwith cause to be assessed and levied the amount of such deficiency pro rata upon the property included within the original assessment and the same shall be assessed, levied and collected in like manner as other assessments of a like character.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 162.

§ 163. **Assessment not invalidated by irregularities.**—No assessment or tax shall be vacated, set aside, canceled, annulled, reviewed or otherwise questioned or affected by reason of any error, omission, irregularity or defect, not actually fraudulent, in any of the steps or proceedings required to be had or taken as preliminary to, or in the making of, the assessment, or in the levying or collection of the tax, nor in relation to or in connection with any proposal, designation of materials, contract, work or improvement for or on account of which such assessment was made or tax imposed. But all property shall be liable to assessment and all assessments shall be valid and of full force and effect notwithstanding any such error, omission, irregularity or defect.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 163.

§ 164. **Right to review assessment or tax for local improvement limited.**—No action or proceeding to set aside, vacate, cancel or annul any assessment or tax for a local improvement shall be maintained, except for total want of jurisdiction to levy and assess the same on the part of the officers, board or body authorized by law to make such levy or assessment or to order the improvement on account of which the levy or assessment was made. No action or proceeding shall be maintained to modify or reduce any such assessment or tax except for fraud or substantial error by reason of which the amount of such tax or assessment is in excess of the amount which should have been lawfully levied or assessed.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 164.

§ 165. **Procedure on review.**—No action or proceeding shall be maintained to set aside, vacate, cancel, annul, review, reduce or otherwise question, test or affect the legality or validity of any assessment or tax for a local improvement, except in the form and manner and by the proceedings herein provided. If, in the proceedings relative to an assessment or tax, entire absence of jurisdiction on the part of the officers, board or body authorized by law to levy or assess the same or to order

the improvement on account of which the assessment was made or tax imposed, is alleged to have existed or in case any fraud or substantial error, other than the errors or irregularities specified in the preceding section, by reason of which substantial damages have been sustained, are alleged to have existed or to have been committed, any party aggrieved thereby, who shall have filed objections thereto within the time and in the manner specified by law therefor, may apply to the supreme court at any special term thereof, held within the judicial district in which the city is situated, for an order vacating or modifying such assessment as to the lands in which he has an interest, upon the grounds in said objections specified, and no other, and upon due notice of such application to the corporation counsel. Each such application shall be made within twenty days after the confirmation of the assessment. Thereupon such court may proceed to hear the proofs and allegations of the parties and determine the same, or may appoint a referee to take the proof and report thereon, or to hear, try and determine the same. If it shall be determined in such proceeding that the officers, board or body had no jurisdiction to make the levy or assessment complained of or to order the improvement, the court may order such assessment or tax vacated. If it shall be determined therein that any such fraud or substantial error has been committed and that the party applying for such relief, has suffered substantial damages by reason thereof, the court may order that the assessment or tax be modified as to such party and as so modified that it be confirmed. A like application may be made to secure a modification or reduction of any such assessment or tax on account of fraud or such substantial error occurring in the performance of the work of the improvement on account of which such assessment or tax is made or levied, and it shall be determined in like manner. If, in any such proceeding, it shall be determined that such fraud or substantial error has been committed, by reason of which any such assessment or tax upon the lands of any such aggrieved party has been unlawfully increased, the court may order that such assessment or tax be modified by deducting therefrom such amount as is in the same proportion to such assessment or tax as the whole amount of such unlawful increase is to the whole amount of the assessment or tax for the improvement. An order so made in any such proceeding shall be entered in the clerk's office of the county in which the city is situated, and shall have the same force and effect as a judgment. The court may, during the pendency of any such proceeding, stay the collection of any assessment or tax involved therein as against the parties thereto. Costs and disbursements of any such proceeding may be allowed in the discretion of the court. No appeal shall be allowed or taken from the order made in any such proceeding, but the determination so made therein shall be final and conclusive upon all parties thereto. No assessment or tax shall be modified otherwise than to reduce it to the extent that the same may be shown by the parties com-

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plaining thereof to have been in fact increased in dollars and cents by reason of such fraud or substantial error. In no event shall that proportion of any such assessment which is the equivalent of the fair value or fair cost of the improvement be disturbed for any cause. No money paid on account of any assessment or tax shall be recovered for any cause, except the amount of the excess of such assessment or tax over and above the fair value and cost of the improvement. In case of the failure of any assessment or tax for any cause, the comptroller shall certify such fact to the common council and it shall be its duty to forthwith cause the same to be relieved and reassessed in a proper manner.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 165.

§ 166. Consolidation of separate proceedings.—Two or more persons may unite in commencing and prosecuting the proceedings to vacate or modify assessments; and when two or more persons have commenced separate proceedings to vacate or modify assessments for the same improvement, the court before whom the same are commenced or pending, or a judge thereof at special term or chambers may, by order, upon due application and notice, consolidate such separate proceedings into one proceeding.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 166.

§ 167. State lands.—Nothing herein contained shall affect any assessment upon lands owned by the state nor be deemed to repeal or modify any of the provisions of section twenty-one of the public lands law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 167.

ARTICLE XI.

DEPARTMENT OF CHARITIES.

Section 170. Commissioner; deputy; overseer of poor.

171. Powers and duties of commissioner.

172. Powers and duties of overseer.

173. City owner of supplies.

174. Liability of city.

§ 170. Commissioner; deputy; overseer of poor.—The commissioner of charities may appoint, to hold office during his pleasure, a deputy, overseer of the poor, and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of the absence or disability of the commissioner or of a vacancy in the office, the deputy shall discharge the duties of the office until the commissioner returns, his disability ceases or the vacancy is filled. The commissioner, deputy and overseer of the poor, before entering upon the discharge of the duties of their respective offices, shall each execute and file with the city clerk an

official undertaking in such penal sum as may be prescribed by the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 170.

References.—Oath of office, Public Officers Law, § 10. Failure to take, Penal Law, §§ 1820, 1821; Public Officers Law, § 15. Powers of deputies, Id. § 9. Vacancies generally, Id. § 30. Official bonds generally, Public Officers Law, §§ 11–13. Acting without filing, Penal Law, §§ 1820, 1821; Public Officers Law, § 15.

§ 171. Powers and duties of commissioner.—The commissioner of charities shall have the general care, management, administration and supervision of the charities, almshouses, hospitals, houses of correction, orphan asylums and all other similar institutions, the control or government of which belongs or is intrusted to the city. He shall make regulations for the expenditure of the moneys appropriated for the support or relief of the poor and for the general supervision of such expenditures. He shall investigate fully the circumstances of all persons alleged to be destitute or without proper means of support, or without proper guardianship, or who are in danger of becoming or are a public burden in any respect; and also the circumstances of their relatives or other persons whose duty it is to relieve or maintain them or contribute to their support; also to institute and prosecute any and all actions and proceedings authorized by law to compel any and all persons liable for the care, maintenance, education or support of any such destitute or dependent persons to contribute thereto, and to indemnify the city and public against any expenditures on account thereof. He shall also prosecute any and all bonds, undertakings or recognizances given for any of the purposes herein mentioned or in any manner relating thereto. Any and all moneys recovered in any such suit, action or proceeding or otherwise paid to or received by the said commissioner on account of the care, maintenance, relief, education or support of any such persons shall be deposited by the commissioner with the city treasurer as a trust fund, and the same shall be applied and expended by the said commissioner for the purpose on account of which the same were paid. Any surplus remaining in said fund at the close of the fiscal year shall be treated as an unexpended balance of money appropriated for such department. The commissioner shall furnish to and file with the comptroller a monthly statement in detail of all receipts and expenditures, including the aid and relief granted by him, with the names and addresses of all recipients.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 171.

§ 172. Powers and duties of overseer.—The overseer of the poor, subject to the regulations and supervision of the commissioner, shall possess all the power and authority of overseers of the poor in the several towns of the county in which the city is situated, and be subject to the same duties, obligations and liabilities. The overseer and his assistants shall have the power to examine under oath any person applying for relief.

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Source.—Second Class Cities L. (L. 1906, ch. 473) § 172.

§ 173. **City owner of supplies.**—The city shall continue to be the owner of supplies furnished to any poor person or applicant for relief until the same are consumed. If any person to whom the same shall be furnished shall sell or exchange the same for money or intoxicating liquors or in any way dispose of the same other than in the manner directed, such conduct shall be deemed a misdemeanor.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 173.

§ 174. **Liability of city.**—Nothing contained in this chapter shall be deemed to make the city liable for the support or relief of any poor person when it is not otherwise so liable.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 174.

ARTICLE XII.

JUDICIARY.

Section 180. Jurisdiction of police court.

- 181. Police justice.
- 182. Vacancy, how filled.
- 183. Jurisdiction and powers.
- 184. Further jurisdiction.
- 185. Bastardy proceedings.
- 186. Office hours.
- 187. Clerk.
- 188. Trial by jury.
- 189. Jury lists.
- 190. Drawing of jurors.
- 191. Pay of jurors.

§ 180. **Jurisdiction of police court.**—If, under the general or local laws, there now exists or shall hereafter be established in the city a court of criminal jurisdiction known as the police court, it shall have the jurisdiction and powers hereinafter provided.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 180.

Construction.—Not intended to establish new courts, but merely to prescribe the jurisdiction and powers of such local criminal courts as are already in existence by virtue of previous city charters. *Wear v. Truitt* (1916), 173 App. Div. 344, 158 N. Y. Supp. 790.

§ 181. **Police justice.**—There shall be one justice of the court to be known as the police justice. Said office shall be filled by election by the electors of the city at the city election. The term of the police justice shall be six years and he shall receive an annual salary, to be fixed by the board of estimate and apportionment, provided, however, that if the city does not have or is not authorized by law to have more than one officer possessing the jurisdiction of a court of special sessions, such salary shall be fixed at

not less than thirty-five hundred dollars per annum. If a police justice in any city shall have served as such for more than twelve consecutive years, the board of estimate and apportionment may, notwithstanding the provisions of section seventy-four of this chapter, increase the salary of such justice, from time to time, during his term of office, to take effect at the time of any such increase or from the first day of January of the current calendar year, as the board may determine. No person shall be eligible for election to the office of police justice unless he be an elector and has been an attorney of the supreme court of the state for five years. In case of the absence or disability of the police justice or of a vacancy in the office, any city judge or judge of the municipal court shall perform the duties of the office until the police justice returns, his disability ceases or the vacancy is filled. (*Amended by L. 1914, ch. 85.*)

Source.—Second Class Cities L. (L. 1906, ch. 473) § 181.

§ 182. **Vacancy, how filled.**—When a vacancy shall occur, otherwise than by expiration of term, in the office of police justice, the same shall be filled, for the balance of the unexpired term, at the next city election happening not less than thirty days after such vacancy occurs. Until such vacancy shall be so filled, the mayor may appoint a qualified attorney to fill the same, who shall hold office until the first day of January after the election at which his successor is elected.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 182.

§ 183. **Jurisdiction and powers.**—The police court shall have, in the first instance, exclusive jurisdiction to try and determine all offenses of which the courts of special sessions have or shall have exclusive jurisdiction, when such offenses are committed within the city. He shall have exclusive jurisdiction to try and determine all complaints and charges for violations of city ordinances, and shall have the power and jurisdiction now or hereafter conferred upon courts of special sessions by section fifty-six of the code of criminal procedure, and shall also have exclusive jurisdiction, in the first instance, to try, for any other misdemeanor committed in the city, any person who is first brought before said court or police justice charged with such offense. Said court shall have power, upon conviction for a misdemeanor, to impose a sentence of imprisonment not exceeding one year, or a fine not exceeding five hundred dollars, or both such fine and imprisonment, with further imprisonment, if such fine is not paid, not exceeding one day for each dollar thereof unpaid, except where a different punishment is by law prescribed for such offense. But any charge of misdemeanor pending before said police court or justice may be removed to a court sitting with a grand jury by the same method now or hereafter provided in sections fifty-seven and fifty-eight of the code of criminal procedure; but a complaint or charge for a violation of a city ordinance shall not be removed.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 183.

Disorderly houses.—A police court in a city of the second class has jurisdiction to try a person charged with the misdemeanor of maintaining a disorderly house, an offense indictable at common law, and the fact that a jury in such court consists of only six jurors is not material where the accused has demanded a jury trial. *People ex rel. Warren v. Brady* (1902), 37 Misc. 126, 74 N. Y. Supp. 973.

Liquor Tax Law violations.—The Police Court of the city of Schenectady has no jurisdiction of the crime of selling liquor on Sunday in violation of subdivision A of section 30 of the Liquor Tax Law by one not holding a liquor tax certificate. *People v. Post* (1914), 163 App. Div. 119, 148 N. Y. Supp. 487.

§ 184. **Further jurisdiction.**—The police justice shall also possess all the powers and jurisdiction of a magistrate, which are or may be conferred by law upon justices of the peace, concerning offenses committed within the city. He shall possess such other powers and perform such other duties as are now or may be conferred or imposed by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 184.

§ 185. **Bastardy proceedings.**—The police justice shall also possess the powers and perform the duties of justices of the peace of towns in cases of bastardy. Such proceedings shall be governed by the provisions of the code of criminal procedure except that they may be held and conducted before the police justice with the same force and effect as if two magistrates were present.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 185.

Bastardy.—A police justice of a city of the second class has jurisdiction to try bastardy proceedings only where the defendant is arrested in the county of the police justice, or where, having been arrested in another county, and having been afforded an opportunity to give the security prescribed by law, he has failed to give it. *People ex rel. Lawton v. Snell* (1916), 216 N. Y. 527, 111 N. E. 50, revg. (1915), 168 App. Div. 410, 153 N. Y. Supp. 30.

§ 186. **Office hours.**—It shall be the duty of the police justice to be present at the police court rooms at such times and during such hours as the public interest may require, unless necessarily detained therefrom.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 186.

§ 187. **Clerk.**—The police justice shall have a clerk of the court, who shall be the confidential appointee of said justice, and who shall have the power to take informations upon which warrants for the arrest of persons charged with the commission of crimes may be issued by said justice. The clerk shall also have the power to issue and sign subpoenas, to administer oaths to witnesses, to make and sign executions, commitments and certificates of conviction and to certify to and sign copies thereof for the execution of any judgment rendered in police court, as police justice or as a court of special sessions. The clerk of the court shall receive all penalties and other moneys or fees payable in such court, and shall pay the same into the city treasury once in each week, and shall file with the comptroller, monthly, an itemized statement of the same. The said justice shall have such other clerical assistance as the board of estimate and

apportionment may prescribe; and, if said board creates the office of deputy clerk, then said deputy clerk shall have the same powers as the clerk of the court. All clerks appointed by the justice shall serve during his pleasure. Said appointments shall be in writing and filed with the clerk of the county in which the city is located and with the city clerk. Said clerk and deputy, if any, before entering upon the discharge of the duties of their respective offices shall each execute and file with the city clerk an official undertaking in such penal sum as may be prescribed by the common council. The police justice may appoint, and at pleasure, remove, a police court attendant, who shall perform such services as may be required of him by the police justice and shall be subject to the order and control of said justice and of no other person. He shall be in the exempt class of the civil service, and shall receive such salary as shall be fixed by the board of estimate and apportionment. The police justice may appoint a member of the police department to said position, and in such case said appointee shall be paid upon the certificate of the police justice from the same fund as other police officers, and when he shall retire from office he shall be reassigned to duty by the chief of police to the rank from which he came.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 187.

§ 188. Trial by jury.—In the police court, at the time of interposing any plea which forms an issue of fact, the defendant may demand a trial by jury, and unless so demanded then a trial by jury is waived.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 188.

§ 189. Jury lists.—Whenever a list is made by the proper officer or officers of the persons who are required to serve as jurors of a city or municipal court, a duplicate of such list shall be filed by such officer or officers with the city clerk. The clerk shall immediately make two copies of such list and file one of such copies with the clerk of the police court, and all jurors in said court shall be drawn from the names contained in such copy of said list.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 189.

§ 190. Drawing of jurors.—When a trial by jury is duly demanded, as above provided, the police justice must forthwith openly draw such number of ballots as he deems necessary from a box, or other receptacle, containing the names of the persons who are returned as jurors of the city for a city or municipal court therein upon the last list thereof filed in such court by the city clerk as above provided, as jurors to attend for the purpose of trying the issues joined as above stated, at a time to which the cause in which issue has been joined shall then be adjourned by him, not more than eight days from the joining of issue, unless the parties consent to a longer adjournment, which consent shall be entered in the minutes of the court. Before drawing such ballots they shall be thoroughly min-

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gled in the box or receptacle containing them, and thereafter, except as herein otherwise provided, and so far as consistent with this chapter, the provisions of sections twenty-nine hundred and ninety-two to twenty-nine hundred and ninety-nine, inclusive, and sections three thousand and six to three thousand and nine, inclusive, of the code of civil procedure shall govern the further proceedings upon the issue joined as provided herein. The police justice has the powers and duties conferred and imposed upon justices of the peace under those sections. The venire must be issued in criminal cases to a police officer, who shall have all the powers and duties of constable under those sections.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 190.

§ 191. **Pay of jurors.**—Jurors in the police court shall receive the same compensation as jurors in justice's court held by justices of the peace.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 191.

ARTICLE XIII.

DEPARTMENT OF LAW.

Section 200. Corporation counsel.

201. Duties of the corporation counsel.

202. Costs.

203. Account of moneys collected.

204. Certification and approval of contracts and conveyances.

205. Compromise of claims.

206. Judgments against the city.

§ 200. **Corporation counsel.**—The corporation counsel shall be the head of the department of law. He may appoint, to hold office during his pleasure, a first assistant and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of the absence or disability of the corporation counsel, or of a vacancy in the office, the first assistant shall discharge the duties of the office until the corporation counsel returns, his disability ceases or the vacancy is filled. The corporation counsel and first assistant before entering upon the discharge of the duties of their respective offices, shall each execute and file with the city clerk an official undertaking in such penal sum as may be prescribed by the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 200.

References.—Oath of office, Public Officers Law, § 10. Failure to take, Penal Law, §§ 1820, 1821; Public Officers Law, § 15. Vacancies generally, Id. § 30. Official bonds generally, Public Officers Law, §§ 11–13. Acting without filing, Penal Law, §§ 1820, 1821; Public Officers Law, § 15.

§ 201. **Duties of the corporation counsel.**—The corporation counsel shall be and act as the legal adviser of the common council and of the several officers, boards and departments of the city. He shall appear for and

protect the rights and interests of the city in all actions, suits and proceedings brought by or against it or any city officer, board or department; and such officer, board or department shall not employ other counsel. The corporation counsel may, however, with the written consent of the mayor, employ counsel, at such compensation as may be approved by the board of estimate and apportionment, to assist him in the argument and conduct of important cases or proceedings in which the city or any officer, board or department thereof is interested or a party.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 201.

§ 202. **Costs.**—Neither the corporation counsel, deputy, clerk, nor any other subordinate or assistant, shall receive any fee or compensation of any kind, other than the salary fixed by law or by the board of estimate and apportionment, except that the corporation counsel shall be entitled in actions and proceedings in which the city or any officer, board or department thereof shall be successful, to receive to his own use all costs and allowances which shall be collected from the adverse party; but he shall repay to the city treasurer all amounts disbursed in the progress of such actions and proceedings which were taxable as disbursements therein, and which shall have been paid by the city, whenever and as soon as such amounts are collected, provided, however, that all costs, allowances and disbursements in proceedings for the opening of streets and the acquisition of land by condemnation shall be collected and paid over to the city treasurer for the benefit of the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 202.

§ 203. **Account of moneys collected.**—The corporation counsel shall pay over at once to the city treasurer, for and on behalf of the city, all moneys, except costs which he is entitled to retain as hereinbefore provided, collected by him for and on behalf of the city, including fines and penalties.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 203.

§ 204. **Certification and approval of contracts and conveyances.**—No written contract providing for the payment of two hundred dollars or more, entered into by the city or any of its officers, boards or departments, shall become effective or be acted under until there shall be indorsed thereon by the corporation counsel or an assistant, a certificate to the effect that the city officer, board or department which has executed the same on behalf of the city, had authority and power to make such contract, and that such contract is in proper form and properly executed; he shall approve all deeds, conveyances, leases and abstracts of title affecting property acquired, conveyed to or leased by the city: and he shall attend to all the law business of the city and discharge such other duties as may be prescribed by law or ordinance of the common council.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 204.

§§ 205, 206.

Supervisors; sealer of weights and measures.

L. 1909, ch. 55.

Section cited.—*People ex rel. Lynch v. Lennon* (1911), 147 App. Div. 537, 538, 132 N. Y. Supp. 620.

§ 205. **Compromise of claims.**—The corporation counsel shall, whenever he considers that the interests of the city will be subserved thereby, enter into an agreement in writing, subject to the approval of the board of estimate and apportionment, to compromise and settle any claim against the city, which agreement shall constitute a valid obligation against the city; and the amount therein provided to be paid shall, with interest thereon from its date, be included in the next city tax budget and be collected and paid the same in all respects as a judgment against the city. If, however, before the adoption of the city tax budget there shall be received by the city treasurer from any source any moneys not otherwise appropriated, the amount in the agreement provided to be paid out of such moneys so received, so far as they will satisfy the same.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 205.

§ 206. **Judgments against the city.**—The amount of any judgment recovered against the city and payable by it, remaining unpaid, with the interest due thereon, in case the time to appeal therefrom has expired and no appeal has been taken, or a certificate of no appeal therefrom has been given by the corporation counsel, or in case such judgment is finally affirmed, or an appeal taken and the execution thereon shall not be stayed, shall be reported to the common council immediately after the same shall have become payable, as aforesaid; and the amount thereof shall be included in the next city tax budget. Such judgments shall be paid in the order of their recovery out of the moneys first paid into the city treasury on account of the annual taxes or, prior thereto, out of temporary loans made in anticipation of the collection of such taxes. If, however, there be any moneys in the treasury to the credit of any fund derived from city revenues, other than taxation, in excess of the estimated revenues from such source, and not otherwise appropriated, sufficient to satisfy judgments against the city, the comptroller shall issue warrants for the payment of such judgments out of said funds in the order of their recovery. Until the moneys applicable to the payment of a judgment have been raised and paid into the city treasury and payment of the judgment has been refused, no execution shall issue against the city unless the amount of such judgment shall not have been included in the tax budget.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 206.

ARTICLE XIV.

SUPERVISORS; SEALER OF WEIGHTS AND MEASURES.

Section 210. Supervisors.

211. Sealer of weights and measures.

L. 1909, ch. 55.

Licensing of dogs.

§§ 210, 211, 230.

§ 210. **Supervisors.**—Supervisors shall have the powers and perform the duties of supervisors of towns under the general laws of the state, and other laws applicable thereto.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 210.

§ 211. **Sealer of weights and measures.**—The sealer of weights and measures shall, within the city, have the powers and perform the duties of sealers of weights and measures of towns under the general laws of the state. He shall supervise the weighing of coal and perform such other duties as may be prescribed by law or ordinance of the common council. He shall receive a salary, to be fixed by the board of estimate and apportionment, and no fees shall be charged or collected by him or by the city for his services.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 211.

ARTICLE XV.

LICENSING OF DOGS.

Repeal of article.—Whole article, §§ 220–232. except § 230, repealed by L. 1917, ch. 800, adding Art. 5-b to Agricultural Law. Article 5-b of Agricultural Law is a general state law on the subject.

§ 230. **Contracts for seizing and impounding dogs.**—The mayor of any city of the second class instead of authorizing the construction of a building as provided in the last section may, in his discretion, contract with any incorporated society for the prevention of cruelty to animals having jurisdiction in such city, for the capture and impoundage of all unlicensed dogs, and for the maintenance of a shelter for lost, strayed or homeless dogs therein, provided, however, that the compensation to be paid to such person or corporation by such contract shall not exceed in any one year the amount collected by the city from the payment of license fees during the current year for which such contract is made. The mayor may prescribe in the contract the manner in which the work is to be done and in which payments are to be made by the city thereunder and may also direct the disposition to be made of any and all dogs seized pursuant to the provisions of this article.

The police justice of any such city shall also have power to order the destruction of any dog which he may deem dangerous or vicious, whether licensed or not, after three days' written notice to and an opportunity to be heard by the owner of such dog.

Source.—L. 1902, ch. 294, § 14, as amended by L. 1904, ch. 82, and L. 1908, ch. 375.

Action for injury to dog; pleading; condition subsequent.—The provision that an owner of a dog "who desires to maintain or preserve any right of property in such dog must procure yearly a license," is a condition subsequent to the bringing of an action for injury to a dog, and must be pleaded as a defense. It is improper practice for the attorney for the defendant in such an action to fail to raise the

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question under the statute until after the court has charged the jury. *Rimbaud v. Belermeister* (1915), 168 App. Div. 596, 154 N. Y. Supp. 333.

ARTICLE XVI.

MISCELLANEOUS PROVISIONS.

Section 240. Additional allowances.

241. Books and papers to be public records.

242. Inhabitants not incompetent; place of trial of actions and proceedings.

243. Witnesses not to be excused from testifying.

244. Liability of city in certain actions.

245. Definition of words.

§ 240. **Additional allowances.**—No allowance or compensation, in addition to the salary or compensation prescribed by law or authorized by this chapter or otherwise by law, shall be paid to any officer or employee of the city or to any person paid out of the city funds, nor shall any amount in excess of the sum payable under any contract be paid on account thereof.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 220.

§ 241. **Books and papers to be public records.**—All books, papers and documents filed with or constituting a part of the records or proceedings of any officer, board or department of the city, shall be deemed to be public records and shall, during office hours, be open to public inspection.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 221.

§ 242. **Inhabitants not incompetent; place of trial of actions and proceedings.**—Upon the trial of any issue or the prosecution of any proceeding, or upon the taking or making of any inquisition, appraisal or award, or upon the judicial investigation of any facts whatever, to which issue, proceedings, inquest, investigation or award the city is a party, or in which the city may, in any way, be interested, no person shall be deemed incompetent as a judge, referee, commissioner, witness or juror by reason of his being an inhabitant, freeholder or taxpayer of the city. The place of trial of all actions and proceedings against the city, or any of its officers, boards or departments shall be the county in which the city is situated.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 222, as amended by L. 1908, ch. 392.

§ 243. **Witnesses not to be excused from testifying.**—No witness shall be excused from testifying in any criminal proceeding or in any investigation or inquiry before the common council, or any committee thereof, or before any officer conducting an investigation, touching the knowledge of such witness as to any offense committed in violation of the provisions of this chapter or of any law of the state or ordinance of the city; but such testimony shall not be used against such witness in any criminal prosecution or proceeding whatever.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 223.

§ 244. **Liability of city in certain actions.**—No civil action shall be maintained against the city for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructed unless it appear that written notice of the defective, unsafe, dangerous, obstructed condition of such street, highway, bridge, culvert, sidewalk or crosswalk was actually given to the commissioner of public works, and that there was a failure or neglect within a reasonable time after the giving of such notice to repair, or remove the defect, danger or obstruction complained of, or, in the absence of such notice, unless it appears that such defective, unsafe, dangerous or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence. But no such action shall be maintained for damages or injuries to the person sustained solely in consequence of the existence of snow or ice upon any sidewalk, crosswalk or street, unless written notice thereof, relating to the particular place, was actually given to the commissioner of public works and there was a failure or neglect to cause such snow or ice to be removed, or the place otherwise made reasonably safe within a reasonable time after the receipt of such notice. The city shall not be liable in a civil action for damages or injuries to person or property, or invasion of personal or property rights, of any name or nature whatsoever, whether casual or continuing, arising at law or in equity, alleged to have been caused or sustained, in whole or in part, by or because of any omission of duty, wrongful act, fault, neglect, misfeasance or negligence on the part of the city, or any of its agents, officers or employees, unless a claim therefor in writing, verified by the oath of the claimant, containing a statement of the place of residence of the claimant, by street and number, if any, otherwise such facts as will disclose such place of residence with reasonable certainty, and describing the time when, the particular place where and the circumstances under which the damages or injuries were sustained, the cause thereof and, so far as then practicable, the nature and extent thereof, shall within three months after the happening of the accident or injury or the occurrence of the act, omission, fault or neglect out of which or on account of which the claim arose, be presented to the common council and served upon the mayor or city clerk and notice of intention to commence an action thereon be served upon the corporation counsel, nor unless an action shall be commenced thereon within one year after the happening of such accident or injury or the occurrence of such act, omission, fault or neglect; but no action shall be commenced to recover upon or enforce any such claim against the city until the expiration of three months after the service of said notice upon the corporation counsel. Nothing herein contained, however, shall be held to revive any claim or cause of action now barred by any existing requirement or statute

of limitations nor to waive any existing limitation now applicable to any claim or cause of action against the city.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 224.

References.—Liability of city for injuries. See authorities, collected and classified, under Village Law, § 141. Presentation of claim to fiscal officer, prerequisite for plaintiff to recover costs, Code Civ. Pro. § 3245. Presentation of false claims, Penal Law, § 1872. False audit and payment, Id. §§ 1863–1864.

Section not retroactive.—An omission to file a claim for personal injuries within the time specified by the above section does not lose the right of a claimant to maintain an action where the cause of action arose prior to the taking effect of the second class cities charter. As to such claims the statutory provisions in force at the time of the accident are to be complied with. *Sehl v. City of Syracuse* (1903), 81 App. Div. 543; 81 N. Y. Supp. 482; *Brennan v. City of Albany* (1911), 143 App. Div. 752, 128 N. Y. Supp. 334.

Rule applicable to all cities.—This section establishes a uniform rule covering the subject of notice of defects in sidewalks in cities of the second class, and abrogates § 218 of the charter of the city of Rochester, which provides that such an action cannot be maintained unless actual notice of the defect in question has been given to the city prior to the accident. *Cahill v. City of Rochester* (1904), 96 App. Div. 557, 89 N. Y. Supp. 67, *affd.* (1906), 183 N. Y. 581, 76 N. E. 1090.

Service of verified notice of claim is a condition precedent to maintenance of action, and merely filing with the clerk of the city and the corporation counsel a written notice of intention to commence an action is insufficient. *Ryan v. City of Schenectady* (1915), 91 Misc. 296, 154 N. Y. Supp. 890.

The presentation of a notice of the claim to the acting president and to the clerk of the common council, is a sufficient compliance with this section. *O'Donnell v. City of Syracuse* (1905), 102 App. Div. 80, 92 N. Y. Supp. 555, *revd.* (1906), 184 N. Y. 1, 76 N. E. 738, 3 L. R. A. (N. S.) 1053.

Notice of defective condition need not be served where the dangerous condition is produced by the city itself through its employees in the department of public works. *Minton v. City of Syracuse* (1916), 172 App. Div. 39, 158 N. Y. Supp. 470.

Notice of intention to sue is not required to be served within three months after the happening of the injury. *Doyle v. City of Troy* (1910), 138 App. Div. 650, 122 N. Y. Supp. 704, *affd.* (1911), 202 N. Y. 625, 96 N. E. 1114.

Application to Syracuse.—*Minton v. City of Syracuse* (1916), 172 App. Div. 39, 158 N. Y. Supp. 470.

Corporation counsel cannot waive service of notice of intention to commence an action. *Merwin v. City of Utica* (1916), 172 App. Div. 51, 158 N. Y. Supp. 257.

Pleading and proof.—Where one is injured solely or in consequence of the existence of snow or ice upon any sidewalk, crosswalk or street, service of the required notice upon the commissioner of public works and a failure or neglect to cause the snow or ice to be removed, or the place otherwise made reasonably safe, within a reasonable time after the receipt of such notice, are essential facts to be alleged and proved by plaintiff. *Ryan v. City of Schenectady* (1915), 91 Misc. 296, 154 N. Y. Supp. 890.

The following decisions were rendered under L. 1886, ch. 572, formerly applicable to all cities of over 50,000; repealed except as to New York City:

Notice, what to contain, etc.—A notice not stating in terms an intention to commence an action, but informing corporation counsel of the nature of the claim, the place where and circumstances under which it arose, and of a purpose to enforce it, held a substantial compliance with the statute. *Sheehy v. City of N. Y.* (1899), 160 N. Y. 139, 54 N. E. 749, *revg.* (1898), 29 App. Div. 263, 51 N. Y. Supp. 519.

The fact that a city charter requires notice to be given to another official, does not excuse compliance with statute. *Curry v. City of Buffalo* (1892), 135 N. Y. 366, 32 N. E. 80; *Krall v. City of N. Y.* (1899), 44 App. Div. 259, 60 N. Y. Supp. 661. But see *Lewis v. City of Syracuse* (1897), 13 App. Div. 587, 43 N. Y. Supp. 455, 1 Am. Neg. Rep. 506.

Service of notice; time of service.—A notice purporting to be given under the Consolidation Act and served on the comptroller of New York, by whom it was delivered to corporation counsel, held a substantial compliance with the statute. *Missano v. The Mayor* (1899), 160 N. Y. 123, 54 N. E. 744, 6 Am. Neg. Rep. 652, revg. (1897), 17 App. Div. 536, 45 N. Y. Supp. 592, and overruling in effect *Babcock v. The Mayor* (1890), 56 Hun 196, 9 N. Y. Supp. 368.

Service by mail insufficient. *Burford v. The Mayor* (1898), 26 App. Div. 225, 49 N. Y. Supp. 969.

Service by administrator within six months after appointment, held sufficient. *Barnes v. City of Brooklyn* (1897), 22 App. Div. 520, 48 N. Y. Supp. 36.

Commencement of an action is not notice. *Curry v. City of Buffalo* (1892), 135 N. Y. 366, 32 N. E. 80, affg. (1890), 57 Hun 25, 10 N. Y. Supp. 392; *Bauer v. City of Buffalo* (Gen. T.) (1892), 44 N. Y. St. Rep. 814, 18 N. Y. Supp. 672.

Waiver of notice.—Certain conduct of corporation counsel, held not to constitute. *Kennedy v. The Mayor* (1898), 34 App. Div. 311, 54 N. Y. Supp. 261. But a direct statement by corporation counsel, that it would not be necessary to serve notice, and that plaintiff might as well commence action at once, held a waiver of notice. *Hamilton v. City of Buffalo* (1900), 55 App. Div. 423, 66 N. Y. Supp. 990, revd. (1903), 173 N. Y. 72, 65 N. E. 944, 13 Am. Neg. Rep. 173.

Pleadings.—Filing of notice must be alleged in complaint. Failure to do so may be taken advantage of at any time. *Krall v. City of New York* (1899), 44 App. Div. 259, 60 N. Y. Supp. 661; *White v. Mayor* (1897), 15 App. Div. 440, 44 N. Y. Supp. 454, 2 Am. Neg. Rep. 213. Sufficiency of pleading. See *McHugh v. The Mayor* (1898), 31 App. Div. 299, 52 N. Y. Supp. 623. Amendment of answer denied, where time had expired. *Grother v. N. Y. & Brooklyn Bridge* (1897), 18 App. Div. 379, 46 N. Y. Supp. 411. In New York, a complaint in action for personal injury, which alleges that claim was presented to corporation counsel, need not also allege that it was presented to comptroller, who failed to adjust or pay it. *Pulitzer v. City of New York* (1899), 29 Misc. 395, 61 N. Y. Supp. 803, revd. (1900), 48 App. Div. 6, 62 N. Y. Supp. 587.

Actions within the statute.—For death by negligence. *Titman v. Mayor* (1890), 57 Hun 469, 10 N. Y. Supp. 689, affd. 1891), 125 N. Y. 729, 26 N. E. 757. For injuries caused by a fall of a tree, although tree is alleged to have been a nuisance. *Kelly v. The Mayor* (1897), 19 Misc. 257, 44 N. Y. Supp. 217. By husband against city for negligence causing loss of wife's services. *Kellogg v. Mayor* (1897), 15 App. Div. 326, 44 N. Y. Supp. 39, 2 Am. Neg. Rep. 43.

§ 245. **Definition of words.**—The word "his," as used in this chapter shall, in all proper cases, be held to include and be co-extensive with the words "her," "it" and "their"; the word "person," shall be held to include and be co-extensive with the words "persons," "company," "joint-stock association" and "corporation." The word "street" shall be held to include and be co-extensive with "roads," "avenues," "highways," "alleys" and "squares"; the word "work" shall be held to include and be co-extensive with "improvements" and "repairs"; the word "materials" shall be held to include and be co-extensive with "supplies," "stationery," "books," "furniture" and "repairs to furniture"; the word "tax" shall

§§ 250, 251.

Construction; saving clause.

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in all proper cases be held to include and be co-extensive with "water rents or rates," "assessments or reassessments for local improvements," and the singular noun shall be held to include and be co-extensive with the plural.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 225.

ARTICLE XVII.

CONSTRUCTION; SAVING CLAUSE; REPEAL.

Section 250. Construction.

251. Saving clause.

252. Laws repealed.

253. When to take effect.

§ 250. **Construction.**—The provisions of this chapter have reference only to a city of the second class. This chapter is intended to be and shall be deemed and held in all courts and jurisdictions to be a public act of which the courts shall take judicial notice. This chapter shall be construed not as an act in derogation of the powers of the state but as one intended to aid the state in the execution of its duties, and shall be liberally construed so as to carry into effect the objects and purposes thereof.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 226; first sentence from § 2.

§ 251. **Saving clause.**—Nothing contained in this chapter shall be construed to repeal any statute of the state or ordinance of the city or rule or regulation of the board of health, not inconsistent with the provisions of this chapter, and the same shall remain in full force and effect, when not inconsistent with the provisions of this chapter, to be construed and operated in harmony with its provisions. The powers which are conferred and the duties which are imposed upon any officer or department of the city under any statute of the state, or any city ordinance which is in force at the time of the taking effect of this chapter shall, if such office or department be abolished by this chapter, be thereafter exercised and discharged by the officer, board or department upon whom is imposed corresponding or like functions, powers and duties under the provisions of this chapter. Where any contract has been entered into by the city prior to the time of the taking effect of this chapter, or any bond or undertaking has been given to or in favor of the city, which contains provisions that the same may be enforced by some officer, board or department therein named, but by the provisions of this chapter such office, board or department is abolished, such contracts, bonds and undertakings shall not in any manner be impaired, but shall continue in full force, and the powers conferred and the duties imposed with reference to the same upon the officer, board or department which has been abolished, shall thereafter be exercised and discharged by the officer, board or department upon whom is conferred or

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imposed like powers, functions or duties under the provisions of this chapter. The park commission, in any city, which at the time this chapter takes effect, has jurisdiction of its park system, is continued in office notwithstanding the provisions of this chapter, with all the powers and subject to all the duties, conferred and imposed upon such commission by law.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 227.

§ 252. **Laws repealed.**—The following acts and parts of acts are hereby repealed:

1. Of the laws enumerated in the schedule annexed, that portion thereof specified in the last column.

2. All acts or parts of acts and ordinances of the city, in so far as inconsistent with the provisions of this chapter.

Nothing herein contained, however, shall be deemed to repeal or in any wise affect the validity of the provisions of chapter five hundred and sixty of the laws of nineteen hundred and two; chapter three hundred and seventy-eight of the laws of nineteen hundred and three; chapters one hundred and seventeen, three hundred and ninety-four and five hundred and fifty-three of the laws of nineteen hundred and three; chapter three hundred and eighty of the laws of nineteen hundred and four; chapters one hundred and eighteen, one hundred and ninety-one, two hundred and twenty-three, five hundred and forty, five hundred and forty-one, five hundred and forty-three, six hundred and forty-five, six hundred and seventy-six and six hundred and eighty-six of the laws of nineteen hundred and five; but all of such acts are hereby continued in full force and effect.

Source.—Second Class Cities L. (L. 1906, ch. 473) § 230.

§ 253. **When to take effect.**—This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1898	182	All	1903	529	All
1899	581	All	1904	82	All
1900	273	All	1904	98	All
1900	415	All	1904	133	All
1900	433	All	1904	256	All
1901	479	All	1904	454	All
1901	525	All	1904	504	All
1901	534	All	1904	507	All
1901	552	All	1904	616	All
1901	604	All	1905	232	All
1902	3	All	1905	444	All
1902	4	All	1905	501	All
1902	177	All	1905	506	All
1902	221	All	1905	687	All
1902	294	All	1906	52	All
1902	328	All	1906	277	All
1902	402	All	1906	448	All
1903	19	All	1906	473	All
1903	31	All	1907	473	All
1903	47	All	1908	23	All
1903	182	All	1908	34	All
1903	408	All	1908	141	All

Cross-references.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1908	190	All	1908	375	All
1908	191	All	1908	392	All
1908	252	All			

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

L. 1900, ch. 273.—This statute was not included in the schedule of repeals annexed to L. 1906, ch. 473, § 230, as the act was passed, but instead L. 1900, ch. 581, was included. This latter act was evidently repealed through inadvertence, as it relates to the Vernon Park Congregational Church of the city of Mount Vernon. L. 1900, ch. 273, should be repealed for the reason stated below.

Statute noted as repealed by L. 1906, ch. 473, § 320, was not in the schedule of repeals attached to that law, but was repealed, nevertheless, under the terms of former § 230, which repealed all acts amendatory of the acts included in the schedule.

L. 1902, ch. 4.—Relates to claims against a city of the second class by officials and employees rendered prior to January 1, 1902, and limits the time for instituting proceedings for the collection thereof. Temporary and now obsolete.

L. 1902, ch. 294.—Regulates the licensing of dogs in cities of the second class. Consolidated in Second Class Cities Law, art 15. Section 14 was amended "to read as follows" by L. 1904, ch. 82, § 1.

L. 1904, ch. 82, all.—Amends L. 1902, ch. 294, § 14. Consolidated in Second Class Cities Law, § 230.

L. 1906, ch. 473.—This statute, the Uniform Charter of Cities of the Second Class, has been consolidated in the Second Class Cities Law, practically section for section.

SECRET FRATERNITIES.

Fraudulent use of names, or title; Penal Law, § 936. Fraudulently procuring written applications, or property; Penal Law, § 935. See Benevolent Orders Law.

SECRET POLICE.

Power of attorney-general to establish bureau; Executive L., § 62, sub. 8.

SECRETARY OF STATE.

Salary, deputies, fees, general powers and duties; Executive Law, §§ 20–33.

SECURED DEBTS.

Tax on; Tax L. §§ 330–340.

SEDUCTION.

Definition and punishment; Penal Law, §§ 2175, 2176.

SEEDS.

Inspection and sale; Agricultural L., §§ 340–341.

SENATE DISTRICTS.

Described; State Law, § 120.

SENATE HOUSE.

See Public Buildings Law, §§ 40–42.

SENECA COUNCIL ROCK.

See Historical Places.

SENTENCE.

Places, terms, etc.; Penal Law, §§ 2180–2197. Commutations; Prison Law, §§ 230–248. See Reprieves.

L. 1913, ch. 625. Sites, grounds and buildings commission. § 1.

SEPULTURE.

Provisions relating to burial, etc.; Penal Law, §§ 2210-2220.

SERVICE OF PAPERS.

Manner; Code Civ. Pro. § 796-802. Time when served by mail; Code Civ. Pro. § 798.

SHEETS.

Length regulated; Public Health L., § 355.

SHELL FISH.

See Conservation Law. Malicious injury; Penal Law, § 1425.

SHELTER FOR HOMELESS WOMEN.

Institution for, in Syracuse; State Charities Law, §§ 380-391.

SHERIDAN.

Monument to General Philip H. Sheridan. See Monuments, L. 1914, ch. 100.

SHERIFF.

Election term; County Law, § 180. Under-sheriffs; County Law, § 181. Deputies; County Law, § 182. Custody of jails; County Law, § 183. Offices; County Law, § 184. Fees; County Law, § 185; Code Civ. Pro. §§ 3307-3309. Removal for nonpayment of moneys; County Law, § 186. When coroner to act as; County Law, §§ 187-188. Proceedings on new sheriff assuming office; County Law, § 195. May command power of county to overcome resistance; Judiciary Law, § 400. Must certify names of persons resisting execution of mandate; Judiciary Law, § 401. Duties in relation to terms of court; Judiciary Law, §§ 402-409. Duties in relation to jails; Prison Law, § 340-360. Duties in relation to the execution of mandates; Code Civ. Pro. §§ 100-103, 108-111, 118. Liability for escape; Code Civ. Pro. § 158. Action upon and assignment of bond for jail liberties; Code Civ. Pro. §§ 160-171. Penalty for permitting escapes; Penal Law, § 1839. Forfeiture of office for certain violations relating to prisons; Penal Law, § 1875.

SHORTHAND REPORTERS.

Examination and certification; General Business L., §§ 85-89-a.

SILK GOODS.

Lien of manufacturers and throwsters; Lien Law, § 185. Enforcement of lien, Lien Law, §§ 200-210.

SILVERWARE.

Fraudulent marking; Penal Law, §§ 422-429. Procedure for punishing violations of Penal Law; Code Crim. Pro. §§ 952-a-952-g.

SITES, GROUNDS AND BUILDINGS COMMISSION.

L. 1913, ch. 625.—An act to establish a commission on sites, grounds and buildings.

Section 1. There shall be a commission on sites, grounds and buildings which shall have power to acquire by gift, purchase or condemnation such properties as will be required from time to time and lay out the grounds and locate all buildings to be erected at all state institutions reporting to the fiscal supervisor and state board of charities and such as may hereafter be established. Said commission shall be composed of the fiscal supervisor,

§ 1.

Smithtown cession repealed.

L. 1914, ch. 442.

a member of the state board of charities, the state architect, a member of the conservation commission and the commissioner of agriculture, or their designated representatives, the chairman of the senate finance committee and the chairman of the assembly ways and means committee; said commission to have authority to appoint the necessary employees needed to conduct the business of the said commission. The chairman of the senate finance committee and the chairman of the assembly ways and means committee shall be paid their traveling and other expenses incurred while discharging their duties as members of this commission. The commission on sites, buildings and grounds shall report to the governor in detail its actions and decisions on all matters relating to sizes, location of buildings and laying out of grounds of existing institutions reporting to the fiscal supervisor of state charities and state board of charities, together with those under construction and such as may hereafter be established. The actions and decisions of the commission shall be final and subject to review only by the governor at a public hearing.

§ 2. The fiscal supervisor shall be chairman of said commission, and as such shall have supervision of the financial and business affairs of the commission. He shall as chairman annually prepare a request to the legislature for suitable appropriations toward aiding the commission to properly perform its duties. The said commission, through its chairman, shall report annually to the legislature, and from time to time, as occasions may arise, to the governor, all the proceedings and accomplishments in the performance of its duties.

§ 3. All acts or parts of acts of general or special laws inconsistent with this act are hereby repealed.

SLANDER.

Special damages need not be proved in action by woman for words imputing unchastity; Code Civ. Pro. § 1906.

SLOT MACHINES.

Keeping of gambling apparatus prohibited; Penal Law, § 982. Seizure and destruction; Penal Law, §§ 983-985. Fraudulent acts relating to; Penal Law, § 1293-c. Disposition of contents, if destroyed by police officer; Penal Law, § 985-a.

SMALL LOANS.

Personal loan companies and brokers, Banking Law, §§ 340-373.

SMITHTOWN.

L. 1914, ch. 442.—An act to repeal chapter three hundred and forty-three of the laws of nineteen hundred and ten, entitled "An act to cede to the town of Smithtown, Suffolk county, all the right, title and interest of the state in lands adjacent to such town between high and low water marks for the protection of clamming," and revesting in the state the title to land ceded thereby.

§ 1. Chapter three hundred and forty-three of the laws of nineteen

Cross-references.

hundred and ten, entitled "An act to cede to the town of Smithtown, Suffolk county, all the right, title and interest of the state in lands adjacent to such town between high and low water marks, for the protection of clamming," is hereby repealed, and all the right, title and interest in the lands of Long Island sound adjacent to the town of Smithtown, Suffolk county, ceded by such act to the town of Smithtown for the protection of clamming are hereby revested in the people of the state of New York in the same manner and to the same extent as if such act had not been passed.

SOCIETIES.

Unauthorized wearing or use of badge, name, etc.; Penal Law, § 2240. Application for membership, obtaining signatures falsely, Penal Law, § 935. Obtaining property of falsely. *Id.*

SOCIETY FOR THE REFORMATION OF JUVENILE DELINQUENTS.

See State Charities Law, §§ 180-214. See also Juvenile Delinquents. Recovery of certain penalties by, Penal Law, § 2152.

SODOMY.

Definition and punishment; Penal Law, § 690.

SOLDIERS AND SAILORS.

Preference in Civil Service; Civil Service Law, § 21. Retirement and pension, Civil Service L., § 21-a. Leave of absence from public duty on Memorial Day; Public Officers Law, § 63. County monuments for; County Law, § 40. Town monuments; Town Law, § 45. Burial in towns; Town Law, §§ 336, 337. Appropriations by towns for Memorial Day observances; Town Law, §§ 136, 137. Licenses to peddle; General Business Law, § 32. Relief; Poor Law, §§ 80-83. Burial of indigent; Poor Law, §§ 84, 85. Care, by county, County Law, § 12, subd. 16. Veteran Associations; Membership Corporations Law, §§ 160-162.

SOLDIERS' AND SAILORS' HOME.

At Bath; Public Buildings Law, §§ 60-66. Relief Corps Home, at Oxford; State Charities Law, §§ 250-258.

SOLDIERS' MONUMENT CORPORATIONS.

Incorporation and powers; Membership Corporations Law, §§ 170-173.

SOUTH CAROLINA EXPOSITION.

L. 1901, ch. 499.—"An act to provide for the representation of the state of New York at the South Carolina, Interstat and West Indian exposition at Charleston, South Carolina, and making an appropriation therefor."
Temporary.

SPECIAL PROCEEDINGS.

In criminal cases, parties, how designated; Code Crim. Pro. § 150. Affidavits, how entitled in criminal proceedings; Code Crim. Pro. § 951.

SPIRITUOUS LIQUORS.

See Liquor Tax Law.

SPY ISLAND.

See Historic Places.

Cross-references.

STAGE COACH CORPORATIONS.

Incorporation and powers; Transportation Corporations Law, §§ 20-24. Jurisdiction of Public Service Commission; Transportation Corporations Law, § 25.

STALLIONS.

Licensing, Agricultural Law, §§ 120-130.

STAMPS.

Forging U. S. or state; Penal Law, § 982. Advertising counterfeit; Penal Law, § 895. Unlawful issue of trade; Penal Law, §§ 2360-2361.

STATE ARCHITECT.

Department reorganized; Public Buildings Law, §§ 6-19-d.

STATE ATHLETIC COMMISSION.

Abolished by L. 1917, ch. 555.

STATE BOARD OF ESTIMATE.

L. 1913, ch. 281.—Repealed by L. 1915, ch. 174, in effect Apr. 3, 1915.

STATE BOARDS AND COMMISSIONS LAW.

L. 1909, ch. 56.—“An act in relation to state boards and commissions, constituting chapter fifty-four of the Consolidated Laws.”
[In effect February 17, 1909.]

CHAPTER LIV OF THE CONSOLIDATED LAWS.**STATE BOARDS AND COMMISSIONS LAW.**

- Article 1. Short title (§ 1). Repealed.
2. State water supply commission (§§ 5–26). Repealed.
 3. State probation commission (§§ 30, 31).
 4. Commissioners for the promotion of uniformity of legislation in the United States (§§ 40–43).
 5. Commissioners of water power on Black river (§ 50).
 6. The Interstate bridge commission (§§ 55–63).
 7. Laws repealed; when to take effect (§§ 70, 71).

ARTICLE I.**SHORT TITLE.**

Section 1. Short title.

§ 1. **Short title.**—This chapter shall be known as the “State Boards and Commissions Law.”

Repealed, probably inadvertently, by L. 1911, ch. 647.

ARTICLE II.**STATE WATER SUPPLY COMMISSION.**

Sections 5–26 repealed by L. 1911, ch. 647. See Conservation Law, Arts. VII and IX.

Consolidators' note to article 2.—This article embraces the powers of the “State Water Supply Commission.” The “River Improvement Commission” was created by the legislature of 1904 with power to regulate the flow of water in rivers and water courses in aid of the public health and safety. The legislature of 1905 established the “State Water Supply Commission” with certain powers as to the approval of sources of water supply of municipal corporations. During the session of 1906 the powers and duties of the “River Improvement Commission” were devolved upon the “Water Supply Commission.” By this article the “Water Supply Commission” is continued and such existing legislation as concerns the powers and duties of the “River Improvement Commission” have been consolidated herein and applied to the “Water Supply Commission.”

Constitutionality.—This act cannot be held to be unconstitutional upon the

ground that it makes no other adequate provision for the payment of compensation of land to be taken for the purpose of the act, since title to the land is to be acquired under the condemnation law; nor is it unconstitutional because by the institution of condemnation proceedings a cloud is placed upon the title of the property which may prevent him from disposing of the same, since the statute does not assume to create any lien upon the property nor prevent any free disposition of the property prior to its acquisition by the state; nor does the act fail to provide reasonable notice to persons interested, since notice is to be given to the parties whose property may be taken and affords them an opportunity to be heard before the commission, and it is immaterial that the preliminary determination, as to whether the regulation of the watercourse is of sufficient importance to warrant the interference of the state, may be made upon the petition alone. *State Water Supply Commission v. Curtis* (1908), 192 N. Y. 319, 85 N. E. 148, affg. (1908), 125 App. Div. 117, 109 N. Y. Supp. 494.

ARTICLE III.

STATE PROBATION COMMISSION.

Section 30. Organization, powers and duties of state probation commission.

31. Employees of state probation commission.

§ 30. Organization, powers and duties of state probation commission.—

The state probation commission is continued. Such commission shall exercise general supervision over the work of probation officers throughout the state, and shall consist of seven members, who shall serve without compensation as members of such commission. The state board of charities, and the state commission of prisons, shall, respectively, once each year, designate a member of their respective bodies, to act as members of the state probation commission; and the commissioner of education shall be, ex officio, a member thereof. As the terms of the appointive members, first appointed by the governor, shall expire, their successors shall be appointed by the governor within thirty days thereafter for a term of four years each. All vacancies occurring among appointive members, from whatsoever cause, shall be filled as soon as practicable thereafter by the governor for the unexpired term. Any appointive member may be removed by the governor for cause and after an opportunity to be heard before the governor. The state commission shall meet at stated times to be fixed by such commission, not less often than once every two months. It shall collect and publish statistical and other information, and make recommendations, as to the operations of the probation system. It shall keep itself informed as to the work of all probation officers, and shall from time to time inquire into their conduct and efficiency. It may require reports from probation officers on blanks furnished by the commission. It shall each year inform all magistrates and probation officers of any legislation directly affecting probation and shall each year publish a list of all probation officers in the state. It shall endeavor, by such means as may seem to it most suitable, to secure the effective application of the

L. 1909, ch. 56.

State probation commission.

§ 31.

probation system and enforcement of the probation law in all parts of the state. It shall make an annual report to the legislature showing its proceedings under this article and the results of the probation system as administered in the various localities in the state, with any suggestions or recommendations it may consider wise for the more effectual accomplishment of the general purposes of this article. Said commission in the discharge of its duties shall have access to all offices and records of probation officers, but this section shall not be construed as giving said commission access to the records of any society for the prevention of cruelty to children or humane society. The state commission may direct an investigation by a committee of one or more of its members of the work of any probation officer and for this purpose, the member or members designated to make such investigation are hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath, and to exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court. (*Amended by L. 1910, ch. 613.*)

Source.—L. 1907, ch. 430, § 1.

Consolidators' note, article 3.—The state probation commission was created by L. 1907, ch. 430, with general supervision over the work of probation officers throughout the state. The Code of Criminal Procedure, § 11-a, provides for the appointment of probation officers by courts having jurisdiction of criminal actions and defines the powers and duties of such officers. Sections 483 and 487 of the Code of Criminal Procedure provide when the court may place a convicted defendant on probation. The Criminal Code, being a procedure act, would be an improper classification for the act creating the State Probation Commission. The provisions of law relating to the State Probation Commission are therefore consolidated in this chapter as the only other classification.

§ 31. Employees of state probation commission.—The state probation commission shall employ a chief executive officer, who shall be its secretary, and who shall receive a salary at the rate of not less than three thousand five hundred dollars a year; a stenographer and such other employees, within the limits of the sums appropriated for its use by the legislature, as may be necessary in the conduct of the business of such commission. The duties of such executive officer and other employees shall be designated by said commission. The legislature shall provide for the necessary and reasonable traveling expenses of the members of said commission and of the employees thereof. Such salaries and expenses shall be paid by the treasurer on the warrant of the comptroller, after approval by the commission.

Source.—L. 1907, ch. 430, § 2.

ARTICLE IV.

COMMISSIONERS FOR THE PROMOTION OF UNIFORMITY OF
LEGISLATION IN THE UNITED STATES.

Section 40. Commissioners for promotion of uniformity of legislation.

41. Term of office and expenses of commissioners.
42. Employees and annual expense allowance.
43. Annual report of commissioners.

§ 40. Commissioners for promotion of uniformity of legislation.—The board of commissioners by the name and style of “commissioners for the promotion of uniformity of legislation in the United States” is continued. It shall be the duty of said board to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates and other subjects; to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and especially to consider whether it would be wise and practicable for the state of New York to invite the other states of the union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states, and to devise and recommend such other course of action as shall best accomplish the purpose of this article.

Source.—L. 1890, ch. 205, § 1.

§ 41. Term of office and expenses of commissioners.—No member of said board shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for his expenses in performing the duties of his office. In case of a vacancy on said board, such vacancy shall be filled by the governor. (*Amended by L. 1909, ch. 240, § 71.*)

Source.—L. 1890, ch. 205, § 2, as amended by L. 1892, ch. 538.

§ 42. Employees and annual expense allowance.—Said board may employ such persons and incur such expenses as may be necessary in the performance of its duties; but the total annual expense of said board shall not exceed the sum of five thousand dollars.

Source.—L. 1890, ch. 205, § 3.

§ 43. Annual report of commissioners.—Said board shall report to the legislature from time to time as said board may deem proper, an account of its transactions and its advice and recommendations, as required by section forty of this article.

Source.—L. 1890, ch. 205, § 5, as amended by L. 1892, ch. 538.

ARTICLE V.

COMMISSIONERS OF WATER POWER ON BLACK RIVER.

Section 50. Commissioners of water power on Black river.

§ 50. Commissioners of water power on Black river.—The governor is authorized to appoint from time to time, and at his pleasure remove, two citizens of Jefferson county and one from Lewis county, interested in the use and owners of water power on the Black river, Beaver river or Moose river, in such counties, to be commissioners of water power on Black river. The superintendent of public works shall also be a commissioner by virtue of his office. Such commissioners shall not receive compensation for their services. Such commissioners are authorized to appoint one gatekeeper for the state dam at Stillwater, on the Beaver river, and one gatekeeper for the dams constructed by the state on the Fulton chain of lakes and Moose river. Such commissioners are authorized to make rules and regulations for the management of the gates in said dams subject to the approval of the superintendent of public works. It shall be the duty of each gatekeeper to observe and obey all rules and regulations so made and approved. The gatekeepers shall receive such compensation as may be fixed by the commissioners, but not more than eleven hundred dollars shall be paid in all as the compensation of both said keepers in any one year, such compensation to be paid in monthly installments by the treasurer upon the warrant of the comptroller issued upon the order of the superintendent of public works. Such commissioners shall have all the rights and authority of such gatekeepers and are authorized to regulate the discharge of water through such gates at such times and in such quantities as they may deem proper, but not in such manner as to injuriously interfere with canal navigation or the navigation of that portion of the Black river used for canal purposes.

Source.—L. 1896, ch. 795, § 1, as amended by L. 1905, ch. 382.

ARTICLE VI.

(Article added by L. 1916, ch. 506.)

THE INTERSTATE BRIDGE COMMISSION.

Section 55. Interstate bridge commission created.

56. Acquisition of bridges by agreement.

57. Bridges, how acquired when not purchased.

58. Proceedings for acquisition of bridges by condemnation.

59. Idem; report of commissioners; confirmation; appeals.

60. Costs.

61. Management of bridges; tolls abolished, et cetera.

62. Expense of acquisition; one-half to be borne by this state.

63. Expense of maintenance a joint charge.

§ 55. **Interstate bridge commission created.**—The state engineer and surveyor, the superintendent of public works and the state highway commissioner shall constitute the interstate bridge commission hereby created. Such commission shall, together with a similar board or commission from the state of Pennsylvania, constitute a joint commission to acquire the rights, franchises and property of the several bridge corporations, municipal corporations, companies, partnerships or individuals owning or operating toll bridges and including the bridge at Pond Eddy in the town of Lumberland, Sullivan county, owned by said town across the Delaware river between the state of New York and the state of Pennsylvania, except such as are owned by steam or electric railroads or railways and used exclusively for railroad or railway purposes. Such acquisition shall be either by purchase or to be had and effected by this state and the state of Pennsylvania under and by virtue of their respective rights of eminent domain, this state to pay one-half of the cost of the said bridges and one-half of the cost of acquiring them, and the other half of the cost of the said bridges and one-half of the cost of acquiring them to be paid by the state of Pennsylvania, or in lieu thereof, in proportion between the state of Pennsylvania and the counties and municipalities thereof as the latter state may by appropriate legislation determine. (*Added by L. 1916, ch. 506.*)

§ 56. **Acquisition of bridges by agreement.**—Such joint commission shall, in its discretion, determine the order in which the several bridge properties, rights and franchises shall be acquired by purchase or condemnation, subject, however, to the amount of the appropriation by the respective state available for such purposes, preference being given to those who, in order of time, shall voluntarily agree with the joint commission upon the purchase price. After the said joint commission shall have acquired the properties, rights and franchises of and in all the bridge corporations, municipal corporations, companies, partnerships or individuals as have so agreed with them upon the purchase price thereof and payment has been made for the same in the manner hereinafter set forth, the said joint commission shall cause personal notice in writing to be served upon the president, secretary or treasurer of each of the bridge corporations, members of the companies or partnerships, individuals and chief executive officer of each of the municipal corporations, which have theretofore failed to agree to sell their rights, properties and franchises or refused to sell the same at a price offered by the said joint commission, setting forth their intention to begin condemnation proceedings under the power of eminent domain, as set forth in this article. (*Added by L. 1916, ch. 506.*)

§ 57. **Bridges, how acquired when not purchased.**—It shall be the duty of the joint commission to determine in which state the condemnation proceedings shall be instituted and proceeded with, and in case the said proceedings shall be instituted in this state they shall be proceeded with in

accordance with sections fifty-eight and fifty-nine of this article. (*Added by L. 1916, ch. 506.*)

§ 58. **Proceedings to acquisition of bridges by condemnation.**—In case the purchase price has not been agreed upon between the joint commission and any of such bridge corporations, municipal corporation, companies, partnerships or individuals, the supreme court in the judicial district in which the bridges or any one of them so about to be taken shall be situated, without any bond being required to be filed, on application thereto by the attorney-general or of any bridge corporation, municipal corporation, company, partnership or persons interested, shall appoint three discreet and disinterested freeholders, none of whom shall be a resident of the county in which the bridge is situated, as commissioners of appraisal and appoint a time not less than twenty or more than thirty days thereafter when the said commissioners shall meet upon the property and view the same and the premises affected thereby. The said commissioners shall give at least ten days' personal notice of the time and place of the first meeting to the attorney-general and to the president, secretary or treasurer of the bridge corporation, members of the company or partnership affected, individual owning such bridge, or executive officer of such municipal corporation, if any of the aforesaid officers or persons so to be notified reside in the county in which said bridge is located, otherwise by advertisement for three consecutive weeks in two newspapers published in the said county and by hand bills posted upon the premises or by such other notice as the court shall direct. The said commissioners having been duly sworn or affirmed faithfully, justly and impartially to decide and true report make concerning the value of the property and franchises so taken, which shall be submitted to them, and in relation to which they are authorized to inquire under the provisions of this article, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses and shall estimate the damage for property taken, injured or destroyed, with all the rights, property and franchises appertaining to the same, and to whom damages are payable. They shall give at least ten days' notice thereof in the manner herein provided to the attorney-general and to the president, secretary or treasurer of the bridge corporation, members of company or partnership affected, individual owning such bridge, or executive officer of such municipal corporation, of the time and place when said commissioners will meet and exhibit their report and hear all exceptions thereto. After making whatever changes are deemed necessary, the said commissioners shall make report to the court, showing the damages, and file therewith a plan showing the location of said bridge or bridges so taken and the name of the corporation, company, partnership or person to whom such damages are payable. (*Added by L. 1916, ch. 506.*)

§ 59. **Idem; report of commissioners; confirmation; appeals.**—Upon the report of said commissioners or any two of them being filed in said court,

either the state or the corporation, company, partnership or persons owning said bridge or bridges, or any party interested, may, within thirty days thereafter, file exceptions to the same and the court shall have power to confirm said report or to modify, change or otherwise correct the same or refer the same back to the same or new commissioners with like powers as to their report; or, within thirty days from the filing of any report or the final action of the court upon the exceptions, any corporation, company or partnership whose property is taken, or the state or any person interested, may appeal and demand a trial by jury, and any corporation, company, partnership, person or party interested therein, or the state, may, within thirty days after final decree, take an appeal to appellate division of the supreme court. If no exceptions are filed or demands made for trial by jury within the said period of thirty days after the filing of said report, the same shall become absolute. The said supreme court at special terms, shall have power to order what notices shall be given in connection with any part of said proceedings and may make all such orders as it may deem requisite. (*Added by L. 1916, ch. 506.*)

§ 60. **Costs.**—The costs of the commissioners and all court costs, including advertisements, incurred in the proceedings aforesaid, shall be defrayed by the state. (*Added by L. 1916, ch. 506.*)

§ 61. **Management of bridges; tolls abolished; et cetera.**—Upon and immediately after the purchase or final proceedings in condemnation, as the case may be, the said bridge or bridges shall become the sole property of the several states, in the proportion aforesaid, and the toll charges thereof shall cease, and said bridge or bridges shall be free to the traveling public under such rules and regulations as may be prescribed by the said joint commission. The damages shall be appraised as of the date upon which the collection of tolls shall cease, with interest thereon at the rate of five per centum during the time an appeal from the appraisal thereof is pending and until the same or the purchase price thereof has been paid, provided that any steam or passenger railroad or railway now having the use and occupation of any such toll bridge under a lease or agreement with any corporation, company, partnership or person owning such bridge shall pay to this state and to the state of Pennsylvania, in equal proportion, the same rental, interest and charges, and in the same manner and proportions as they now pay the said bridge corporation or corporations, companies, partnerships or owners as aforesaid. Provided, further, that any steam or electric railroad or railway corporation holding in whole or in part, in conjunction with a bridge corporation, company, partnership or individual, any bridge over the said river, upon which tolls are now collected or charged, shall be entitled to compensation to be agreed upon or ascertained as damages in the manner aforesaid in proportion as their interests may appear to and in the value of the bridge or bridges as a toll bridge or bridges only, and exclusive of its value as a railroad or railway bridge,

L. 1909, ch. 56.

Laws repealed.

§§ 62, 63, 70, 71.

and said bridge or bridges shall remain the property of the railroad or railway corporations, but toll charges thereon shall cease as heretofore provided in this section. (*Added by L. 1916, ch. 506.*)

§ 62. **Expense of acquisition; one-half to be borne by this state.**—The one-half cost of the purchase price or of the damages under condemnation proceedings of all bridge properties, rights or franchises, or interests therein, acquired by the states of New York and Pennsylvania, in the manner above set forth, shall be paid by the state treasurer of the state of New York, upon the warrant of the comptroller, for its proportionate share of the amount due from this state to the corporation or corporations, company or companies, partnership or partnerships, or proper person or persons, as their interests may appear, upon vouchers audited by the interstate bridge commission of this state. (*Added by L. 1916, ch. 506.*)

§ 63. **Expense of maintenance a joint charge.**—Upon the acquisition as aforesaid by this state jointly with the state of Pennsylvania of the bridge properties, rights and franchises, as hereinbefore provided, such bridge or bridges, except in the case of railroad or railway bridges as hereinbefore provided, shall be and remain in the charge and custody of the said joint commission, and such bridges and the immediate approaches thereto shall be maintained jointly by this state and the state of Pennsylvania in equal proportions, and shall be kept in constant repair and rebuilt when destroyed, and the expense thereof and therefor shall be paid as are other expenses incident to the maintenance of property in charge and custody of the said state; provided that appropriate concurrent legislation for the same purpose be enacted by the state of Pennsylvania. (*Added by L. 1916, ch. 506.*)

ARTICLE VII.

LAWS REPEALED; WHEN TO TAKE EFFECT.

(Article renumbered by L. 1916, ch. 506.)

Section 70. Laws repealed.

71. When to take effect.

§ 70. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (*Former § 55 renumbered by L. 1916, ch. 506.*)

§ 71. **When to take effect.**—This chapter shall take effect immediately. (*Former § 56 renumbered by L. 1916, ch. 506.*)

SCHEDULE OF LAWS REPEALED.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1890	205	All	1896	795	All
1892	538	All	1904	734	All
*1894	349	All	1905	382	All

* Inserted in schedule and expressly repealed by L. 1909, ch. 240, § 100, in effect Apr. 22, 1909.

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Cross-references.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1905	723	All	1907	354	All
1906	415	All	1907	430	All
1906	418	All	1908	180	All

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

L. 1890, ch. 205.—Sections 1 and 3 of this statute are consolidated in State Boards and Commissions Law, §§ 40, 42. Sections 2 and 5 were amended "to read as follows" by L. 1892, ch. 538, and as so amended are consolidated in §§ 41 and 43 of this chapter. Section 4 contained an appropriation and is obsolete.

L. 1892, ch. 538.—Sections 1 and 2 of this statute are consolidated in State Boards and Commissions Law, §§ 41, 43. Section 3 contained an appropriation and is obsolete.

L. 1896, ch. 795.—This statute was amended "to read as follows" by L. 1905, ch. 382, and as so amended is consolidated in State Boards and Commissions Law, § 50.

L. 1904, ch. 734.—This statute, establishing the "River Improvement Commission" so far as applicable to the "Water Supply Commission," has been consolidated in the State Boards and Commissions Law pursuant to the provisions of L. 1906, ch. 418. Section 1 is omitted as obsolete, the commission being no longer in existence. Sections 2, 3, 5-10 are consolidated in §§ 10, 11, 13-18 of this chapter. Sections 4, 11 and 12 were amended "to read as follows" by L. 1907, ch. 354, and as so amended are consolidated in §§ 12, 19 and 20. Section 13, except the last sentence, is covered by § 5 of this chapter; the last section is consolidated in § 21. Section 14 is consolidated in § 21. Section 15 is consolidated in § 24. Section 16 is consolidated in § 22.

L. 1905, ch. 382.—Consolidated in State Boards and Commissions Law, § 50.

L. 1905, ch. 723.—This statute established the "State Water Supply Commission" and as amended has been consolidated in the State Boards and Commissions Laws. Section 1 is consolidated in § 5 of this chapter. Sections 2-5 were amended "to read as follows" by L. 1906, ch. 415, and as so amended have been consolidated in §§ 5-8. Section 6 is consolidated in § 23. Section 7 is omitted as covered by § 24. Section 8 is consolidated in § 9. Section 9, providing an appropriation, is omitted as temporary and obsolete. Sections 10 and 11 are unnecessary.

L. 1906, ch. 415.—This statute amended L. 1905, ch. 723, §§ 2-5, and has been consolidated in State Boards and Commissions Law, §§ 5-8.

L. 1906, ch. 418.—This statute transferred upon the "State Water Supply Commission" powers and duties of the "River Improvement Commission." The provisions of the act became obsolete upon the incorporation of the provisions of law relating to the powers and duties of the "River Improvement Commission" in the State Boards and Commissions Law as a part of the article relating to "State Water Supply Commission."

L. 1907, ch. 354.—This statute amended L. 1904, ch. 734, §§ 4, 11 and 12, and has been consolidated in the State Boards and Commissions Law, §§ 12, 19 and 20.

L. 1907, ch. 430.—This statute creating the State Probation Commission is consolidated in State Boards and Commissions Law, §§ 30, 31.

STATE BOARD OF MEDIATION.

See Labor Law.

STATE BOUNDARIES.

See State Law.

STATE BUILDING.

L. 1914, ch. 429.—An act to authorize the state architect to receive tenders of sale or gift to the state of real estate in the city of Buffalo, as a site for a state building in said city, to contain all branch offices of state officers, bureaus or departments located or needed in said city, and to authorize the city of Buffalo to offer or tender the sale or gift of such a site.

Temporary.

STATE CHARITIES.

See State Charities Law; Letchworth Village.

STATE CHARITIES LAW.

L. 1909, ch. 57.—“An act relating to state charities, constituting chapter fifty-five of the Consolidated Laws.”
[In effect February 17, 1909.]

CHAPTER LV OF THE CONSOLIDATED LAWS.

STATE CHARITIES LAW.

- Article 1. Short title; definitions (§§ 1, 2).
 2. State board of charities (§§ 3-20).
 3. State charities' aid association (§§ 30-32).
 4. Regulation of state charitable institutions (§§ 40-52).
 5. Syracuse State Institution for Feeble-Minded Children (§§ 60-71).
 6. State Custodial Asylum for Feeble-Minded Women (§§ 80-83).
 7. Rome State Custodial Asylum (§§ 90-95).
 8. Craig Colony for Epileptics (§§ 100-117).
 9. New York State Hospital for the Care of Crippled and Deformed Children (§§ 130-138).
 10. New York State Hospital for the Treatment of Incipient Pulmonary Tuberculosis (§§ 150-163).
 11. Institutions for juvenile delinquents (§§ 180-214).
 12. House of Refuge and Reformatory for Women (§§ 220-233).
 13. New York State Woman's Relief Corps Home (§§ 250-257).
 14. Thomas Indian School (§§ 270-276).
 15. Licensing dispensaries (§§ 290-296).
 16. Licenses for placing out destitute children (§§ 300-308).
 17. Aged, decrepit and mentally enfeebled persons (§§ 320-324).
 18. Care of inebriate women (§§ 340-348).
 19. Berkshire Industrial Farm (§§ 360-372).
 20. Shelter for Unprotected Girls (§§ 380-391).
 21. Anchorage at Elmira (§§ 400-419).
 22. General provisions applicable to charitable institutions (§§ 450-461).
 23. Laws repealed; when to take effect (§§ 470, 471).

ARTICLE I.

SHORT TITLE; DEFINITIONS.

- Section 1. Short title.
 2. Definitions.

§ 1. Short title.—This chapter shall be known as the “State Charities Law.”

Source.—Former State Charities L. (L. 1896, ch. 546) § 1.

General Note.—State Charities Law is the result of an examination of all the general statutes relating to the organization, powers and duties of the state board of charities, the state charitable institutions and other institutions subject to the supervision of the state board of charities, their finances and the acts regulating the management and prescribing the treatment and control of the inmates thereof, and including the legislation passed at the session of 1907. In consolidating this law we have included several independent acts relating to the care of inebriate women; New York State Hospital for Crippled and Deformed Children; New York State Hospital for Treatment of Incipient Pulmonary Tuberculosis; Aged, Decrepit and Mentally Enfeebled Persons; the Anchorage at Elmira; Burnham Industrial Farm; Shelter for Unprotected Girls at Syracuse; New York State Woman's Relief Corps Home, and licenses for placing out destitute children. [Report of Board of Statutory Consolidation, p. 5306.]

§ 2. Definitions.—The term “state charitable institutions,” when used in this chapter, shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the state, except institutions for the instruction of the deaf and dumb and the blind, and such institutions which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the commission in lunacy or the prison commission, whether managed or controlled by the state or by private corporations, societies or associations.

Source.—Former State Charities L. (L. 1896, ch. 546) § 2.

Consolidators' note.—As a number of independent laws relating to charitable institutions other than state charitable institutions have been consolidated in this law, we recommend that the following be added to § 2 so as to cover such institutions:

The term “charitable institutions,” when used in this chapter, shall include all institutions, whether state, county, municipal, incorporated or not incorporated, of a charitable, eleemosynary, correctional or reformatory character, which by § 11, article 8, of the Constitution, are subject to the visitation of the state board of charities.

Charitable institutions.—The word “charitable” as here used is to be given only its usual and ordinary meaning. An institution both educational and charitable falls within these provisions, and the fact that it is subject to the visitation of the superintendent of public instruction does not prevent it from being charitable in its character and purpose. Thus, the New York Institution for the Blind, a private institution, is a charitable institution so far as it clothes, educates and maintains indigent pupils at public expense or, by donations from individuals, and as to such pupils is subject to supervision by State Board of Charities; but so far as it educates pupils paying for tuition, etc., it is not to be regarded as a charitable institution. *People ex rel. New York Institution for the Blind v. Fitch* (1897), 164 N. Y. 14, 47 N. E. 983, 38 L. R. A. 591.

Exemption from taxation by special act of legislature does not of itself determine that a corporation is charitable. Nor does the fact that a corporation may take and administer charitable gifts necessarily make it of a charitable nature. *People ex rel. State Board of Charities v. N. Y. Soc. for Prevention of Cruelty to Children* (1899), 161 N. Y. 233, 55 N. E. 1063, reasserted upon motion for reargument (1900), 162 N. Y. 429, 56 N. E. 1004.

The New York Society for the Prevention of Cruelty to Children, organized under ch. 130 of the Laws of 1875, is not subject to visitation by the State

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Board of Charities, since it receives no public moneys for charitable uses and administers no charity in a legal sense, but exists for the sole purpose of enforcing criminal laws to prevent cruelty to children, although, as a mere incident of its work, it feeds, clothes and cares for children temporarily while detained as witnesses or victims of cruelty pending prosecution of offenders in courts. *Idem.*

ARTICLE II.

STATE BOARD OF CHARITIES.

Section 3. State board of charities.

4. Officers of the board.
5. Compensation and expenses of commissioners.
6. Meetings and effect of nonattendance.
7. Office room and supplies.
8. Official seal, certificates and subpoenas.
9. General powers and duties of board.
10. Visitation, inspection and supervision of institutions.
11. Soldiers' and sailors' home exempted.
12. Powers and duties of board on visits and inspections.
13. Investigations of institutions.
14. Orders of board directed to institutions.
15. Correction of evils in administration of institutions.
16. Duties of the attorney-general and district-attorneys.
17. State, nonresident and alien poor.
18. Transfers of inmates of state charitable institutions.
19. Reports of state board of charities.
20. Institutions for the deaf and dumb and the blind.

§ 3. State board of charities.—There shall continue to be a state board of charities, composed of twelve members, who shall be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be appointed from and reside in each judicial district of the state, and three from the city of New York, who shall reside in such city. They shall be known as commissioners of the state board of charities, and hold office for eight years. No commissioner shall qualify or enter upon the duties of his office, or remain therein, while he is a trustee, manager, director or other administrative officer of an institution subject to the visitation and inspection of such board. The commissioners in office at the time this chapter takes effect shall continue in office for the terms for which they were respectively appointed.

Source.—Former State Charities L. (L. 1896, ch. 546) § 3, as amended by L. 1897, ch. 437, and L. 1907, ch. 380; originally revised from L. 1867, ch. 951, §§ 1, 2; L. 1873, ch. 571; L. 1895, ch. 771, § 1.

References.—Legislature required to provide for State Board of Charities, to visit and inspect state and other charitable institutions, Constitution, Art. 8, § 11. Appointment by governor and confirmation by senate, Public Officers Law, § 7. Removal by state senate, *Id.* § 32.

§ 4. Officers of the board.—The board may elect a president and vice-

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president from its own members, and shall appoint and continue to have a secretary, and may appoint such other officers, inspectors and clerks as it may deem necessary or proper and fix their compensation, who shall respectively hold their offices during the pleasure of the board.

Source.—Former State Charities L. (L. 1896, ch. 546) § 4; originally revised from L. 1867, ch. 951, § 9; L. 1895, ch. 771, § 5.

§ 5. Compensation and expenses of commissioners.—The compensation of each commissioner, in recognition of the provisions of the constitution, is fixed at ten dollars for each day's attendance at meetings of the board or of any of its committees, not exceeding in any one year the sum of five hundred dollars. The expenses of each commissioner, necessarily incurred while engaged in the performance of the duties of his office, and his outlay for any assistance that may have been required in the performance of such duties, on the same being paid out and certified by the commissioner making the charge, shall be paid by the treasurer, on the warrant of the comptroller.

Source.—Former State Charities L. (L. 1896, ch. 546) § 5; originally revised from L. 1867, ch. 951, § 15; L. 1895, ch. 771, § 6.

Compensation.—Commissioners are not permitted to include the time spent in going to and returning from meetings. Rept. of Atty. Genl. (1895) 156.

§ 6. Meetings and effect of nonattendance.—The board may adopt rules and orders, regulating the discharge of its functions and defining the duties of its officers. It shall, by rule, provide for holding stated and special meetings. Six members regularly convened shall constitute a quorum. The failure on the part of any commissioner to attend three consecutive meetings of the board during any calendar year, unless excused by a formal vote of the board, may be treated by the governor as a resignation by such nonattending commissioner and the governor may appoint his successor. The annual reports of the board shall give the names of commissioners present at each of its meetings.

Source.—Former State Charities L. (L. 1896, ch. 546) § 6; originally revised from L. 1873, ch. 571, §§ 2, 6; L. 1895, ch. 771, § 7.

§ 7. Office room and supplies.—The trustees of public buildings shall furnish and assign to such board, in the capitol, at Albany, suitably furnished rooms for its office and place of holding meetings, and the comptroller shall furnish it with all necessary journals, account books, blanks and stationery.

Source.—Former State Charities L. (L. 1896, ch. 546) § 7; originally revised from L. 1867, ch. 951, § 10; L. 1895, ch. 771, § 3.

References.—Trustees of public buildings, Public Buildings Law, § 2. Duties in respect to rooms for boards, etc., Id. § 3.

§ 8. Official seal, certificates and subpoenas.—The board shall cause a record to be kept of its proceedings by its secretary or other proper officer, and it shall have and use an official seal; and the records of its proceedings

and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of its president or secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven; it may issue subpoenas, which, when authenticated by its president and secretary, shall be obeyed and enforced in the same manner as obedience is enforced to an order or mandate made by a court of record.

Source.—Former State Charities L. (L. 1896, ch. 546) § 8; originally revised from L. 1895, ch. 771, § 4.

References.—Official seals of state officers, Public Officers Law, § 60. Copies of records and papers as evidence, Code Civ. Pro. § 933. Compelling attendance and testimony of witnesses, Id. §§ 854–859.

§ 9. **General powers and duties of board.**—The state board of charities shall visit, inspect and maintain a general supervision of all institutions, societies or associations which are of a charitable, eleemosynary, correctional or reformatory character, whether state or municipal, incorporated or not incorporated, which are made subject to its supervision by the constitution or by law; and shall:

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions aforesaid.

4. Approve or disapprove the organization and incorporation of all institutions of a charitable, eleemosynary, correctional or reformatory character which are or shall be subject to the supervision and inspection of the board.

5. Investigate the management of all institutions made subject to the supervision of the board, and the conduct and efficiency of the officers or persons charged with their management, and the care and relief of the inmates of such institution therein or in transit.

6. Aid in securing the best sanitary condition of the buildings and grounds of all such institutions, and advise measures for the protection and preservation of the health of the inmates.

7. Aid in securing the establishment and maintenance of such industrial, educational and moral training in institutions having the care of children as is best suited to the needs of the inmates.

8. Establish rules for the reception and retention of inmates of all institutions which, by section fourteen of article eight of the constitution, are subject to its supervision.

9. Investigate the condition of the poor seeking public aid and advise measures for their relief.

10. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

11. Collect statistical information in respect to the property, receipts and expenditures of all institutions, societies and associations subject to its supervision, and the number and condition of the inmates thereof, and of the poor receiving public relief.

Source.—Former State Charities L. (L. 1896, ch. 546) § 9; originally revised from L. 1867, ch. 951, § 4; L. 1895, ch. 771, §§ 1, 2.

References.—Approval of certificates of incorporation of charitable corporations, Membership Corporations Law, § 41; of hospital corporations, Id. § 130. Adoption of rules for charitable institutions in municipalities, General Municipal Law, § 87. Classification of salaries of employees of state charitable institutions, State Finance Law, § 17. Recommendations as to change of location of county almshouse, County Law, § 31.

Powers of board do not extend to New York Society for Prevention of Cruelty to Children. *People ex rel. Board of Charities v. N. Y. Soc. for Prev. of Cruelty to Children* (1899), 161 N. Y. 233, 55 N. E. 1063, reaffirmed on rearg. (1900), 162 N. Y. 429, 56 N. E. 1004. Institutions for the instruction of the blind are subject to the supervision of the board. *People ex rel. N. Y. Inst. for Blind v. Fitch* (1897), 154 N. Y. 14, 47 N. E. 983, 38 L. R. A. 591.

Jurisdiction of the State Board of Charities over institutions which receive public money. *Rept. of Atty. Genl.* (1904) 371.

Payment of public money to charitable institution; noncompliance with rules of board.—A municipal corporation is prohibited from paying public moneys to a charitable institution, wholly or partly under private control, for the care, support and maintenance of inmates who are not received and retained therein pursuant to the rules established by the State Board of Charities for the purpose of determining whether such inmates are properly a public charge. *Matter of New York Juvenile Asylum* (1902), 172 N. Y. 50, 64 N. E. 764.

§ 10. Visitation, inspection and supervision of institutions.—All institutions of a charitable, eleemosynary, reformatory or correctional character or design, including reformatories (except those now under the supervision and subject to the inspection of the prison commission), but including all reformatories, except those in which adult males convicted of felony shall be confined, asylums and institutions for idiots and epileptics, almshouses, orphan asylums, and all asylums, hospitals and institutions, whether state, county, municipal, incorporated or not incorporated, private or otherwise, except institutions for the custody, care and treatment of the insane, are subject to the visitation, inspection and supervision of the state board of charities, its members, officers and inspectors. Such institutions may be visited and inspected by such board, or any member, officer or inspector duly appointed by it for that purpose, at any and all times. Such board or any member thereof may take proofs and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection. Any member or officer of such board, or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge thereof any information he may deem necessary in the discharge of his duties. The board may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished,

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in a clear, uniform and prompt manner, for the use of the board. No such officer or inspector shall divulge or communicate to any person without the knowledge and consent of said board any facts or information obtained pursuant to the provisions of this chapter; on proof of such divulgement or communication such officer or inspector may at once be removed from office. The annual reports of each year shall give the results of such inquiries, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employee of any such institution, society or association who shall unlawfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish the information required by the board or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The rights and powers hereby conferred may be enforced by an order of the supreme court after notice and hearing, or by indictment by the grand jury of the county, or both.

Source.—Former State Charities L. (L. 1896, ch. 546) § 10; originally revised from L. 1867, ch. 951, §§ 4-6; L. 1873, ch. 571, § 4; L. 1893, ch. 771, §§ 8, 9, 10, 11.

References.—Visitation and inspection of almshouses, Poor Law, § 116; constitutional requirement as to visitation and inspection of charitable institutions, Constitution, Art. 8, § 11.

Visitation of New York Society for Prevention of Cruelty to Children not authorized. *People ex rel. State Board of Charities v. N. Y. Soc. for Prev. of Cruelty to Children* (1899), 161 N. Y. 233, 55 N. E. 1063, reaffirmed on rearg. (1900), 162 N. Y. 429, 56 N. E. 1004. Institutions for the blind are subject to visitation. *People ex rel. N. Y. Inst. for Blind v. Fitch* (1897), 154 N. Y. 14, 47 N. E. 983, 38 L. R. A. 591. New York Juvenile Guardian Society subject to visitation. *N. Y. Juvenile Guardian Society v. Roosevelt et al.* (1877), 7 Daly 188.

Institutions under supervision of state board of charities.—Dispensaries of incorporated hospitals maintained by trust funds and endowment should obtain a license which subjects them to inspection and the rules of the state board of charities. *Rept. of Atty. Genl.* (1908) 317.

Hospitals for the treatment of contagious diseases and quarantine hospitals are under the supervision of the state board of charities. *Rept. of Atty. Genl.* (1910) 615.

Reports; verification of.—State Board of Charities may compel the verification of all reports made to it. *Rept. of Atty. Genl.* (1897) 249.

§ 11. Soldiers' and sailors' home exempted.—The New York state soldiers' and sailors' home is hereby exempted from the management and control of the state board of charities, and in respect to said institution said board is hereafter only to exercise its constitutional right to visit and inspect.

Source.—L. 1900, ch. 769, § 1.

References.—Other provisions relative to New York State Soldiers' and Sailors' Home, Public Buildings Law, §§ 60-66.

§ 12. Powers and duties of board on visits and inspections.—On such visits, inquiry shall be made to ascertain:

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1. Whether all parts of the state are equally benefited by the institutions requiring state aid.

2. The merits of any and all requests on the part of any such institution for state aid, for any purpose, other than the usual expenses thereof; and the amount required to accomplish the object desired.

3. The sources of public moneys received for the benefit of such institution, as to the proper and economical expenditure of such moneys and the condition of the finances generally.

4. Whether the objects of the institution are being accomplished.

5. Whether the laws and the rules and regulations of this board, in relation to it, are fully complied with.

6. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

7. The methods of government and discipline of its inmates.

8. The qualifications and general conduct of its officers and employees.

9. The condition of its grounds, buildings and other property.

10. Any other matter connected with or pertaining to its usefulness and good management.

Source.—Former State Charities L. (L. 1896, ch. 546) § 11; originally revised from L. 1895, ch. 771, § 10.

Expenses.—State Board of Charities has full power to inquire into and report upon the expenses of all state charitable institutions. Rept. of Atty. Genl. (1899) 127.

§ 13. **Investigations of institutions.**—The board may direct an investigation, by a committee of one or more of its members, of the affairs and management of any institution, society or association, subject to its supervision, or of the conduct of its officers and employees. The commissioner or commissioners designated to make such investigation are hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath, and to exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

Source.—Former State Charities L. (L. 1896, ch. 546) § 12; originally revised from L. 1867, ch. 951, § 8; L. 1895, ch. 771, § 12.

References.—Power of board to administer oaths, Code Civ. Pro. § 843. Power to compel attendance and testimony of witnesses, Id. §§ 854-859.

§ 14. **Orders of board directed to institutions.**—If it shall appear, after such investigation, that inmates of the institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision or other condition necessary to their comfort and well being, said board may issue an order, in the name of the people, and under its official seal, directed to the proper officers or managers of such institution, requiring them to modify such treatment or apply such remedy, or both, as shall therein be specified; before such order is issued, it must be approved by a justice of the supreme court, after such

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notice as he may prescribe and an opportunity to be heard, and any person to whom such an order is directed who shall wilfully refuse to obey the same, shall, upon conviction, be adjudged guilty of a misdemeanor.

Source.—Former State Charities L. (L. 1896, ch. 546) § 13; originally revised from L. 1895, ch. 771, § 13.

Application.—Where inmates of institutions are not properly cared for, the state board of charities may issue orders to correct such conditions. Rept. of Atty. Genl. (1910) 618.

§ 15. **Correction of evils in administration of institutions.**—The state board of charities shall call the attention of the trustees, directors or managers of any such institution, society or association, subject to its supervision, to any abuses, defects or evils which may be found therein, and such officers shall take proper action thereon, with a view to correcting the same, in accordance with the advice of such board.

Source.—Former State Charities L. (L. 1896, ch. 546) § 14; originally revised from L. 1895, ch. 771, § 14.

§ 16. **Duties of the attorney-general and district attorneys.**—If, in the opinion of the board or any three members thereof, any matter in regard to the management or affairs of any such institution, society or association, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, and he shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required, to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties.

Source.—Former State Charities L. (L. 1896, ch. 546) § 15; originally revised from L. 1873, ch. 571, § 5; L. 1895, ch. 771, § 17.

§ 17. **State, nonresident and alien poor.**—A poor person shall not be admitted as an inmate into a state institution for the feeble-minded, or epileptics, unless a resident of the state for one year next preceding the application for his admission. The state board of charities, and any of its members or officers, may, at any time, visit and inspect any institution subject to its supervision to ascertain if any inmates supported therein at a state, county or municipal expense are state charges, nonresidents or alien poor; and it may cause to be removed to the state or country from which he came any such nonresident or alien poor found in any such institution.

Source.—Former State Charities L. (L. 1896, ch. 546) § 16; originally revised from L. 1880, ch. 549, (annual Supply bill), ext. from § 1.

References.—Poor person defined, Poor Law, § 2. Visitation of almshouses to ascertain if inmates are state charges, Idem, § 120. Relief and care of state poor, Idem, §§ 90-104.

§ 18. **Transfers of inmates of state charitable institutions.**—When, in

the judgment of the state board of charities, any inmate of any state charitable institution more properly belongs in a state charitable institution other than the one to which he or she was originally committed, or would be benefited by transfer to any other state charitable institution, the state board of charities with the written approval of the governor may order such transfer of such inmate. Before issuing such order the state board of charities shall notify the board of managers of the institution from which and of the institution to which such transfer is to be made, and shall afford them an opportunity to be heard. Copies of such order shall be sent to the boards of managers and the superintendents of the institution where the inmate then is and of the institution to which he or she is to be transferred. The authorities of the institution to which such inmate is to be transferred shall, at the expense of such institution, provide for the conveyance of such inmate from such other state charitable institution as may be designated by the state board of charities in such order, and such inmate shall be received by the authorities of the institution to which such transfer is made. When any inmate is so transferred there shall be furnished certified copies of the commitment papers and of the record of such inmate. The board of managers of the institution to which such inmate is transferred shall have all the powers and duties in relation to such inmate which it possesses in relation to other inmates of such institution.

Source.—Former State Charities L. (L. 1896, ch. 546) § 16-a, as added by L. 1905, ch. 452.

§ 19. Reports of state board of charities.—The state board of charities shall annually report to the legislature its acts, proceedings and conclusions for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and from the reports made to it as in this chapter provided, giving a complete and itemized statement of expenditures for state poor, and of such other matters relating to the institutions subject to its visitations as it may deem necessary or proper. The board shall collect and, so far as it shall deem advantageous, embody in its annual reports such information as it may deem proper relating to all institutions subject to the visitation of the board and respecting the best manner of dealing with those who require assistance from the public funds, or who receive aid from private charity, and represent its views as to the best methods of caring for the poor and destitute children who may be distributed through the various institutions of the state, or who may be without instruction or guidance, and furnish in tabulated statements, as nearly as possible, the number, sex, age and nativity of persons in this state, and in the several counties thereof, who are in any way receiving the aid of public, private or organized charity, with any other particulars it may deem proper. And all officers of such institutions shall furnish such statistics on or before the first day of November in each and every year for the preceding fiscal year, as may be

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required by said board; and every person refusing to do so, in violation of this section, without reasonable excuse, shall be subject to a penalty of one hundred dollars, to be sued for in the name of the people by the attorney-general of the state, upon his receiving written notice from the state board of charities of such refusal. The annual reports of the board may, in its discretion, present the designs and plans and the general estimates for buildings and improvements which it may deem necessary for any state charitable institution, with the opinion of the board respecting any appropriation required as asked in behalf of such institution, other than for maintenance or ordinary purposes. The board may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

Source.—Former State Charities L. (L. 1896, ch. 546) § 17; originally revised from L. 1873, ch. 571, § 7; L. 1895, ch. 771, § 18.

References.—Reports to legislature, printing and distribution, State Printing Law, §§ 5, 6.

§ 20. Institutions for the deaf and dumb and the blind.—Institutions for the deaf and dumb and the blind shall be subject to such visitation and inspection by the state board of charities as the constitution provides, but nothing in this article shall be deemed to take from the comptroller of the state any power which he now has to audit and supervise the expenditures made on account of the institutions for deaf-mutes and for the blind.

Source.—Former State Charities L. (L. 1896, ch. 546) § 18; originally revised from L. 1895, ch. 771, § 11.

References.—Instruction of deaf mutes and of the blind, Education Law, §§ 970–980. See also under headings "Blind," "Deaf and Dumb."

The New York Institution for the Blind is a charitable institution so far as it clothes, educates and maintains indigent pupils at public expense, or by donations from individuals, and as to such pupils it is subject to state supervision; but so far as it educates pupils who pay for their tuition, it is not charitable, but an educational institution, and as to those pupils the State Board of Charities has no supervision. *People ex rel. N. Y. Inst. for the Blind v. Fitch* (1897), 154 N. Y. 14, 47 N. E. 983, 38 L. R. A. 591.

ARTICLE III.

STATE CHARITIES' AID ASSOCIATION.

Section 30. Visits by the state charities' aid association.

31. Duties of officers in charge of institutions; enforcement of orders.

32. Annual reports.

§ 30. Visits by the state charities' aid association.—Any justice of the supreme court, on written application of the state charities' aid association, through its president or other officer designated by its board of managers, may grant to such persons as may be named in such application, orders to enable such persons, or any of them, as visitors of such association to visit, inspect and examine, in behalf of such association, any of the public chari-

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table institutions and state hospitals for the insane owned by the state, and the county, town and city poor-houses and alms-houses within the state. The persons so appointed to visit, inspect and examine such institutions shall reside in the counties from which such institutions receive their inmates, and such appointments shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the institution to be visited, inspected and examined and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

Source.—Former State Charities L. (L. 1896, ch. 546) § 30; originally revised from L. 1893, ch. 635, § 1.

References.—Visit of almshouses by members of State Charities Aid Association, Poor Law, § 121. Visitation of state hospitals for insane, Insanity Law, § 61. Inspection of county tuberculosis hospitals, County Law, § 49-d.

§ 31. Duties of officers in charge of institutions; enforcement of orders.—All persons in charge of any such institution shall admit each person named in any such order into every part of such institution, and render such person every possible facility to enable him to make in a thorough manner such visits, inspection and examination, which are hereby declared to be for a public purpose, and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner as obedience is enforced to an order or mandate by a court of record.

Source.—Former State Charities L. (L. 1896, ch. 546) § 31; originally revised from L. 1893, ch. 635, § 2.

§ 32. Annual reports.—Such association shall make an annual report to the state board of charities upon matters relating to the institutions subject to the visitation of such board; and to the state commission in lunacy upon matters relating to the institutions subject to the inspection and control of such commission. Such reports shall be made on or before the first day of November for each preceding fiscal year.

Source.—Former State Charities L. (L. 1896, ch. 546) § 32; originally revised from L. 1893, ch. 635, § 3.

ARTICLE IV.

REGULATION OF STATE CHARITABLE INSTITUTIONS.

Section 40. Fiscal supervisor of state charities.

41. Office and clerical force of fiscal supervisor.
42. Powers and duties of fiscal supervisor.
43. Removals by governor.
44. Fiscal year. (Repealed).
45. Quarterly or monthly estimates of expenses; contingent fund.
46. Monthly statements of receipts and expenditures.

47. Affidavit of steward; vouchers.
48. Purchases.
49. Plans and specifications, contracts, special orders, orders for extra work, special fund estimates, payments.
50. Visitation and reports by managers or trustees.
51. Appointment and removal of managers or trustees.
52. Admission to state charitable institutions.

§ 40. **Fiscal supervisor of state charities.**—The office of fiscal supervisor of state charities is continued. At the expiration of the term of the present incumbent, the governor shall appoint, by and with the advice and consent of the senate, a fiscal supervisor of state charities. A successor to such supervisor shall be appointed in like manner. The term of office of the fiscal supervisor of state charities shall be five years, and he shall be paid by the state an annual salary of six thousand dollars, and his actual and necessary expenses. If a vacancy shall occur, otherwise than by expiration of term, in the office of fiscal supervisor of state charities, a fiscal supervisor of state charities shall be appointed in the manner provided by this section for the unexpired term of his predecessor.

Source.—Former State Charities L. (L. 1896, ch. 546) § 40, as added by L. 1902, ch. 252, § 1.

References.—Appointments by governor and confirmation by senate, Public Officers Law, § 7. Removal by governor, and proceedings thereon, Id. §§ 32-35. Creation of vacancies, Id. §§ 13, 30, 37. Terms of officer chosen to fill vacancy, Id. § 38.

§ 41. **Office and clerical force of fiscal supervisor.**—The fiscal supervisor of state charities shall be provided by the proper authorities with a suitably furnished office in the state capitol. He may employ a first deputy and a second deputy, a stenographer and such other employees as may be needed. The salaries and reasonable expenses of the fiscal supervisor, his deputies, and the necessary clerical assistants shall be paid by the treasurer of the state, on the warrant of the comptroller, out of any moneys appropriated therefor. (*Amended by L. 1913, ch. 173.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 41, as added by L. 1902, ch. 252, and amended by L. 1908, ch. 54.

§ 42. **Powers and duties of fiscal supervisor.**—The fiscal supervisor shall, as to the state institutions reporting to him:

1. Visit each of such institutions at least twice in each calendar year.
2. Examine into the condition of all buildings, grounds and other property connected with any such institution, and into all matters relating to its financial management, and for such purpose he or his representatives shall have free access to the grounds, buildings, and all books, papers, property and supplies of any such institution; and all persons connected with any such institution shall give such information and afford such facilities for such examination or inquiry as the supervisor may require.
3. Appoint, in his discretion, a competent person to examine the books,

papers and accounts of any institution to the extent deemed necessary.

4. Annually report to the legislature his acts and proceedings for the year ending September thirtieth last preceding, with such facts in regard to the conditions of the buildings, grounds and property, and the financial management of the state institutions reporting to him as he may deem necessary for the information of the legislature, including estimates of the amounts required for the use of such institutions and the reasons therefor. The fiscal supervisor shall also on the first days of January and July in each year report to the governor the condition of the buildings, grounds and property on such date, together with such suggestions in regard to the financial management of such institutions as he deems proper. He shall also on request of the governor or of any committee of either house of the legislature, make a special report in relation to the condition of the buildings, grounds and property, or the financial management of such institutions or any of them.

5. He shall designate, subject to the approval of the comptroller, the forms in which all records, accounts and reports of the financial operations of the institutions shall be made and kept. (*Amended by L. 1909, ch. 149 and L. 1911, ch. 405.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 42, as added by L. 1902, ch. 252.

References.—Member of state board of classification of prison industries, Prison Law, § 184; of board of classification of salaries in state charitable institutions, State Finance Law, § 17. Printing and publication of reports of state officers, State Printing Law, §§ 5, 7.

The duties of the state fiscal supervisor are limited to those of supervising the fiscal officers of the institutions and the physical condition of their grounds and buildings. He has no supervision in respect to the policies, discipline or methods of such institutions. Rept. of Atty. Genl. (1909) 697.

Duty of fiscal supervisor to examine funds.—Whatever funds are established and maintained by the rules, and managed and controlled by the authorities of the institutions which report to the fiscal supervisor are not only subject to examination by him, but such examination is a part of his official duty. Rept. of Atty. Genl. (1912) 128.

Power of fiscal supervisor to direct use of soft coal.—The fiscal supervisor has power to require that State institutions use soft instead of hard coal, except in certain cases. Rept. of Atty. Genl. (1914) 98.

Deputies may be appointed by the state fiscal supervisor with the power to visit state institutions. Rept. of Atty. Genl. (1909) 696.

§ 43. Removals by governor.—A fiscal supervisor of state charities, or the superintendent or the steward of any institution subject to the provisions of this article, may be removed by the governor for cause, an opportunity having been given him to be heard in his defense.

Source.—Former State Charities L. (L. 1896, ch. 546) § 43, as added by L. 1902, ch. 252.

References.—Removal of officers appointed by governor and proceedings thereon, Public Officers Law, §§ 32, 33, 35.

The power of the Governor under this section is a special or supervisory power

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given him to investigate and remove incompetent officials where the board of managers fails to do its duty, and does not limit or interfere with the power of removal by said board. Rept. of Atty. Genl. (1909), 853, 855.

Removal of superintendent of Woman's Relief Corps Home; power of the board of managers. Rept. of Atty. Genl. (1906) 261.

§ 44. Fiscal year.—(*Amended by L. 1909, ch. 149, and L. 1911, ch. 405, and repealed by L. 1916, ch. 118, § 5.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 44, as amended and renumbered by L. 1902, ch. 252; L. 1903, ch. 473; L. 1908, ch. 24; originally revised from L. 1879, ch. 109.

Reference.—Fiscal year generally, State Finance Law, § 2.

§ 45. Quarterly or monthly estimates of expenses; contingent fund.—The superintendent or other managing officer of each of the state institutions reporting to the fiscal supervisor shall quarterly or monthly, and upon such day as the fiscal supervisor shall direct, cause to be prepared triplicate estimates, in such detail as may be required by the fiscal supervisor, of the expense required for the institution of which he has the supervision, for the ensuing quarter or month. He shall countersign and submit two of such triplicates to the fiscal supervisor and retain the other to be placed on file in the office of the institution. The fiscal supervisor shall cause such estimates to be revised either as to quantity or quality of supplies and the estimated cost thereof, and shall certify that he has carefully examined the same and that the articles contained in such estimate, as revised and approved by him, are actually required for the use of the institution and shall thereupon present such estimate and certificate to the comptroller. Upon the revision and approval of such estimate the comptroller shall authorize the board of managers, trustees or other managing officers of such institution to make drafts on him as the money may be required for the purposes mentioned in such estimates, which draft shall be paid on his warrant out of the funds in the treasury of the state appropriated for the support of such institution. In every such estimate there shall be a sum named, not to exceed two hundred and twenty-five quarterly, or seventy-five dollars as a monthly contingent fund, for which a minute detailed statement shall be made. No expenditures shall be made from such contingent fund, except in case of actual emergency requiring immediate action, or except for such articles as may be previously approved by the fiscal supervisor. The treasurer of any such institution shall pay no accounts unless they are contained in the estimate provided in this section and duly approved by the fiscal supervisor. Nor shall the treasurer of any such institution named or referred to in this section pay accounts for supplies furnished to officers or employees, unless the same be drawn from the ordinary supplies provided for the general use of the institution. No persons, other than the officers and employees of such institution, and the families of the superintendents, medical officers, adjutants, quartermasters or stewards, necessarily residing therein, shall be allowed room and main-

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tenance, except at a rate fixed by the state comptroller and the fiscal supervisor with the approval of the governor.

The superintendent of each of the state institutions reporting to the fiscal supervisor shall personally inspect and pass upon all articles abandoned for use, and report to the fiscal supervisor at such time and on such forms as may be directed by him.

Any general expenses necessarily and lawfully incurred by the fiscal supervisor for, or on account of one or more of the institutions reporting to him, shall be apportioned to such institution or institutions on the basis of the number of inmates, and included in the estimates of such institution or institutions in the manner provided by this section. (*Amended by L. 1909, ch. 149, L. 1911, chs. 9 and 405, L. 1913, ch. 663, and L. 1914, ch. 517.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 45, as amended and renumbered by L. 1902, ch. 252; originally revised from L. 1895, ch. 13, §§ 1, 2; L. 1893, ch. 214, § 2.

Consolidators' note.—The last sentence of this section relates to the continuance in office of certain officers and employees in the comptroller's office, who, on April 1, 1902, were performing duties under § 41 of the former State Charities Law. To make it clear that the reference is not to § 41 of the consolidated law of that name, we have eliminated the title of the act and substituted the year and chapter of the act intended.

Approval of estimates.—The State Charities Law does not permit the purchase of goods under special fund estimates before estimates thereof are duly approved by the fiscal supervisor. Rept. of Atty. Genl. (1911) 559.

Revision of monthly estimates by fiscal supervisor.—This section should be construed in a reasonable manner by the board of managers of a state institution and by the fiscal supervisor. Items excluded by the fiscal supervisor in revising monthly estimates should not be charged to the contingent fund, unless some unforeseen emergency occurs. Rept. of Atty. Genl. (1909) 858.

The fiscal supervisor may cause estimates to be revised by officers of state institutions so as to cause a reduction of the amount. He may enforce compliance by subordinate officers of requests for economy only in the manner prescribed by this section. Rept. of Atty. Genl. (1910) 814.

Power of state fiscal supervisor to reject certain expenditures. Rept. of Atty. Genl. (1909) 700.

The estimates for any given month may properly include the cost of a quantity of supplies sufficient to fill the requirements for several months, but such estimates should be approved by the comptroller pursuant to section 41 of the State Finance Law. Rept. of Atty. Genl. (1909) 700.

Maintenance of families of officers and employees.—The families of the officers and employees of charitable institutions, except those of the superintendents, medical officers, adjutants, quartermasters and stewards, are required to pay for their maintenance. Atty. Genl. Opin. (1915), 4 State Dept. Rep. 519.

Supplies for officers and employees may differ from those provided for the inmates of institutions, but such supplies should be delivered through the general storehouse of the institution. Rept. of Atty. Genl. (1910) 816.

Maintenance of the families of the superintendent and steward at the State Custodial Asylum at Newark can only be legally granted by the salary classification commission. Rept. of Atty. Genl. (1910) 937.

Employment of an attorney in extradition proceedings is a lawful charge against

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an institution and payment may be made from the contingent fund. Rept. of Atty. Genl. (1909) 693.

§ 46. **Monthly statements of receipts and expenditures.**—The treasurer of each state institution reporting to the fiscal supervisor shall, on or before the fifteenth day of each month, make to the fiscal supervisor a full and perfect statement of all the receipts and expenditures, specifying the several items, for the last preceding calendar month. Such statement shall be verified by the affidavit of the treasurer attached thereto, in the following form: I, treasurer of the, do solemnly swear that I have deposited in the bank designated by law for such purpose all the moneys received by me on account of such during the last month; and I do further swear that the foregoing is a true abstract of all the moneys received, and expenditures made by me or under my direction as such treasurer during the month ending on the day of, nineteen
(*Thus amended by L. 1909, ch. 149.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 46, as amended and renumbered by L. 1902, ch. 252; originally revised from L. 1895, ch. 807.

References.—Comptroller may require accounts to be rendered, State Finance Law, § 21. Forms of accounts, Id. §§ 16, 17. Deposit of money by state officers and charitable institutions, Id. §§ 10, 11. Designation of bank by managers, State Charities Law, § 458.

§ 47. **Affidavit of steward; vouchers.**—There shall be attached to such treasurer's statement the affidavit of the steward or other officer having like powers, to the effect that the goods and other articles therein specified were purchased and received by him or under his direction at the institution, that the goods were purchased at a fair cash market price and paid for in cash, and that he or any person in his behalf had no pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deductions or presents, or in any other manner whatever, directly or indirectly; that the articles contained in such bill were received at the institution; that they conformed in all respects to the specifications under which they were purchased and conformed in quantity to the invoice rendered for such supplies. Such statement shall be accompanied by the voucher showing the payment of the several items contained in the statement, the amount of such payment and for what the payment was made. Such vouchers shall be examined by the fiscal supervisor and compared with the estimates made for the month for which the statement is rendered, and if found correct shall be indorsed and forwarded by the fiscal supervisor, with the statement, to the comptroller, who shall have the power of final audit in accordance with the estimate. If any voucher is found objectionable, the fiscal supervisor or the comptroller shall indorse his disapproval thereon, with the reason therefor, and return it to the treas-

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urer, who shall present it to the board of managers for correction and immediately return it. All vouchers shall be filed in the office of the comptroller. (*Amended by L. 1911, ch. 405.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 47, as amended and renumbered by L. 1902, ch. 252; originally revised from L. 1893, ch. 214, § 4.

Reference.—Inspection of supplies by steward, State Finance Law, § 18.

§ 48. **Purchases.**—All purchases for the use of the state institutions reporting to the fiscal supervisor shall be made for cash or on credit or time not exceeding thirty days; every voucher shall be duly filled up, and with every abstract of vouchers paid there shall be proof on oath that the voucher was properly filled up and the money paid. The board of managers or trustees shall make all needful rules and regulations to enforce the provisions of this section. The fiscal supervisor, a member or officer of the state board of charities or manager or officer of any such institution, shall not be interested, directly or indirectly, in the furnishing of materials, labor or supplies for the use of any such institution, nor shall any manager or trustee act as attorney or counsel for the board of managers or trustees thereof. The boards of managers or trustees or other board or officer performing similar functions in the institutions reporting to the fiscal supervisor may be authorized by the fiscal supervisor to purchase by contract such supplies not included under joint contract as it may be found desirable to purchase for the use of any such institution. Such contracts shall be executed by the superintendent of such institution under the direction of the board of managers or trustees or other board or officer performing similar functions, as the case may be, and subject to the approval of the fiscal supervisor. Such contracts shall be let in conformity with the provisions of this article in relation to estimates and shall be awarded to the lowest responsible bidder. All goods for the use of such institutions, except those furnished pursuant to law by some other institution of the state, shall be bought, as far as practicable of manufacturers or their immediate agents. All contracts, if let, shall, subject to the provisions of this article relating to estimates, be awarded to the lowest responsible bidder. Each of such institutions may manufacture such supplies and materials to be used in the institution as can be economically made therein. Between the first day of July and the thirtieth day of September in each year the fiscal supervisor shall call the superintendents of the state institutions reporting to the fiscal supervisor to meet at his office in Albany. The superintendents present at such meetings shall consider and determine, subject to the power granted to the fiscal supervisor in section forty-five of this article, the following matters:

1. Which articles of supplies it is practicable to purchase for all the state institutions reporting to the fiscal supervisor or any of them, by joint contracts.

2. The specifications for articles of supplies to be purchased by joint contract.

3. The provisions of the contracts under which articles of supplies are to be purchased jointly.

There shall be a committee of six, to be known as the purchasing committee for the state charitable institutions reporting to the fiscal supervisor, to be constituted as follows: four superintendents and two stewards. The fiscal supervisor shall appoint a superintendent as chairman of the purchasing committee, whose term shall be two years or until his successor is appointed, and the chairman so appointed shall annually appoint two stewards as members of such committee, whose term of service shall be one year. The superintendent shall select three of their number present at the annual meeting of said superintendents held at the office of the fiscal supervisor in Albany to act on this committee, two of whom shall serve for one year and one for two years, and thereafter they shall be selected biennially in the order of the expiration of their respective terms. The designation of the superintendents and stewards as members of such committee shall be deemed a part of their official duties and those so designated must serve and attend all meetings of the purchasing committee unless excused by the fiscal supervisor. The members of the committee shall be entitled to their necessary expenses in attending its meetings. A fund shall be created for that purpose and charged against the maintenance account of all the institutions on a pro rata basis. Such committee upon the call of the fiscal supervisor, upon notice of not less than forty-eight hours, shall meet for the purpose of considering and determining the advisability of purchasing supplies in quantities for future delivery. Such committee shall consider proposals and, subject to the approval of the fiscal supervisor, make awards under joint contracts for the purchase of staple articles of supplies for any or all of the state institutions reporting to the fiscal supervisor, and shall appoint a committee of two to execute joint contracts in accordance with such awards, subject to the approval of the fiscal supervisor. These provisions are however subject to the powers now possessed by or hereafter conferred upon the fiscal supervisor of state charities. (*Amended by L. 1909, ch. 149, L. 1911, ch. 305 and L. 1913, ch. 662.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 48, as amended and renumbered by L. 1902, ch. 252; L. 1903, ch. 473; L. 1905, ch. 457; L. 1908, ch. 360; originally revised from L. 1895, ch. 932. (Annual supply bill.)

References.—Managers and officers not to be interested in purchases, State Finance Law, § 12; Penal Law, § 1868.

Approval of purchases.—A contract for the delivery of coal made by the purchasing committee of superintendents of state institutions may be disapproved by the fiscal supervisor if he takes action as soon as the terms of the contract are called to his attention. Rept. of Atty. Genl. (1910) 810.

A temporary employee in the office of overseer is not a public officer, within the meaning of this section, and his voucher for material furnished may be approved by the fiscal supervisor. Rept. of Atty. Genl. (1909) 703.

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The term "responsible" referring to bidders, is not limited to financial responsibility only, but is used in a much broader sense. *Atty. Genl. Opin. (1915), 4 State Dep. Rep. 573.*

Bids for supplying coal at the New York Soldiers' and Sailors' Home at Bath.—In the purchase of supplies for the State institutions reporting to the fiscal supervisor, authority is given to purchase the same upon contract, with the approval of the fiscal supervisor, but all such contracts must be made with the lowest responsible bidder. *Rept. of Atty. Genl. (1915) 116.*

Cancellation of contract for incandescent lamps found to be inefficient, may be ordered, although no notice was given to the contractor of a test for determining the efficiency. *Atty. Genl. Opin. (1915), 4 State Dep. Rep. 573.*

§ 49. **Plans and specifications, contracts, special orders, orders for extra work, special fund estimates, payments.**—The governor, the president of the state board of charities and the fiscal supervisor, or a majority of such officers, shall approve or reject plans and specifications for the erection, alteration, repairs or improvements of buildings or plant for any state institution reporting to the fiscal supervisor, except the New York State Reformatory at Elmira and the Eastern New York Reformatory at Napanoch; and no such erection, alteration, repairs or improvements shall be made until the plans and specifications therefor have been so approved. Contracts for such work of erection, alteration, repairs or improvements may be let by the board of managers or trustees, with the approval of the governor, the president of the state board of charities and the fiscal supervisor, or a majority of such officers, for the whole or any part of the work to be performed, and, in the discretion of the managers or trustees, and subject to such approval, such contracts may be sublet. Special orders for such work in amounts less than one thousand dollars may be issued by the state architect upon authorization by the board of managers or trustees, subject to the approval of the fiscal supervisor. Copies of all such contracts and special orders shall be filed with the fiscal supervisor, with the comptroller and with the board of managers or trustees. The fiscal supervisor and the board of managers or trustees shall determine to what extent and for what length of time advertisements are to be inserted in newspapers for proposals for the erection, alteration, repairs or improvements of buildings or plant of state institutions reporting to the fiscal supervisor. A preliminary deposit or certified check drawn upon some legally incorporated bank or trust company of this state shall in all cases be required as an evidence of good faith, upon all proposals from contractors for such work, to be deposited with the superintendent of the institution for which the work is to be performed, in an amount to be determined by the state architect. All such contracts and special orders for the erection, alteration, repairs or improvements of buildings or plant of state institutions reporting to the fiscal supervisor shall contain a clause that the contract shall only be deemed executory to the extent of the moneys available, and no liability shall be incurred by the state beyond the moneys available for the purpose. All contracts in an amount greater than one thousand dollars shall have

the performance thereof secured by sufficient bond or bonds, to be approved by and filed with the comptroller. All work done by special orders in an amount less than one thousand dollars need have no surety bond provided payment is to be made only after the work is completed and approved. In all cases in which the contracts to be let are for the purpose of connecting any such institution with the system or line or lines maintained or operated by any public service corporation or repairing or improving any such connection, such public service corporation shall not be required to make the preliminary deposit or to give the certified check upon submitting its proposal as hereinbefore provided nor to give any bond for the performance of the work, nor shall any advertising for proposals be necessary where the public service corporation is to perform the work. The work of erection, alteration, repairs or improvements of buildings or plant of state institutions reporting to the fiscal supervisor may be done by the employment of inmate or outside labor, either or both, and by the purchase of materials in the open market whenever, in the opinion of the fiscal supervisor and state architect, such course shall be more advantageous to the state. No compensation shall be allowed for the employment of inmate labor. Where money is appropriated for any specific purpose other than for maintenance, and the work, materials, furniture, apparatus or other supplies are not to be performed or purchased pursuant to contract or special order duly made therefor, such money shall be expended pursuant to special fund estimates made to the fiscal supervisor by the board of managers or trustees of the institution for which such appropriation is made. The provisions of this article relating to the estimates of the expense required for state institutions reporting to the fiscal supervisor shall apply to such estimates; and when such work is to be performed in accordance with plans and specifications prepared by the state architect or is to be paid for from appropriations for the erection, alteration, repairs or improvements of buildings or plant, such estimates shall also be subject to his approval. Except as above specified all such work shall be done by contract or special order. The form of the contract or special order shall be prescribed by the state architect. All payments on contracts, special orders and special fund estimates shall be made on the voucher of the board of managers or trustees as the work progresses or the purchase of material is made, and upon bills duly certified, rendered and audited and approved by the fiscal supervisor. Payments on contracts and special orders shall also be subject to the approval of the state architect. No item of an appropriation made for the performance of such work shall be available, except for advertising, unless one or more contracts, special orders or special fund estimates shall first have been made for the completion of such work within the appropriation therefor. If an appropriation be made for the erection, alteration, repairs or improvement of buildings or plant, at a state institution reporting to the fiscal supervisor in an appropriation act specifying two or more objects for which the

appropriation shall be applied, and any one of such objects shall have been accomplished for a less sum than the amount specified in the act, the unexpended balance shall be applicable to the completion of any other work specified in the act, if, after due advertisements, no bids shall have been received within the amount specifically appropriated therefor. Each original bid, with an abstract thereof, shall accompany the copy of the contract or special order which is to be filed with the comptroller. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 47.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 49, as added by L. 1902, ch. 252, and amended by L. 1903, ch. 473, and L. 1905, ch. 457.

Construction of section with section 65 of the Insanity Law. Rept. of Atty. Genl. (1913) 70.

Contract with railroad company.—The board of managers of the State Industrial School at Industry may not contract with a railroad company for such changes in its tracks, etc., as will incur additional expense to the state nor may they agree to save harmless a railroad company from losses and damage. Rept. of Atty. Genl. (1910) 604.

"Special orders"; power of state architect to issue.—The state architect has no authority to issue "special orders" in excess of one hundred dollars. The order for work in excess of such amount should conform with all the requirements of this section in the case of contracts. Rept. of Atty. Genl. (1909) 508.

Unexpended balance of appropriation; use of.—The lowest bid for building a sewage disposal plant being in excess of the appropriation made for such work, an unexpended balance, remaining from an appropriation for cottages and a trunk conduit, etc., may lawfully be used for the construction of said plant. Rept. of Atty. Genl. (1910) 448.

§ 50. Visitations and reports by managers or trustees.—The board of managers or trustees of each of the state institutions reporting to the fiscal supervisor in addition to their other duties now required by law, shall hold monthly meetings at the institution under its charge and, by a majority of its members, visit and inspect the institution for which it is appointed at least monthly, and shall make a written report to the governor, the state board of charities and the fiscal supervisor within ten days after each visitation, to be signed by each member making such visitation. Such reports shall include the minutes of the monthly meetings and shall state in detail the condition of the institution visited and of its inmates, and such other matters pertaining to the management and affairs thereof as in the opinion of the board should be brought to the attention of the governor, the state board of charities or the fiscal supervisor of state charities, and may contain recommendations as to needed improvements in the institution or its management. The state board of managers of reformatories shall meet monthly at some of the institutions under its management, and shall at least monthly visit and inspect each such institution either by a majority of said board or a committee of its members, and shall make a like report to the governor, the state commission of prisons and the fiscal supervisor. Managers or trustees who fail to attend the meetings of their respective boards or fail to make such visitations for

L. 1909, ch. 56.

Regulation of state charitable institutions.

§ 51.

three successive months, shall be deemed to have vacated their membership in such boards of managers or trustees, whereupon the governor shall fill the vacancies so created as provided by law, unless the absence of such managers or trustees shall be excused by the governor. (*Amended by L. 1909, ch. 149 and L. 1911, ch. 405.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 50, as added by L. 1902, ch. 252, and amended by L. 1903, ch. 473; L. 1906, ch. 685; L. 1907, ch. 283, and L. 1908, ch. 24.

Monthly meetings by board of managers.—Chapter 625 of the Laws of 1913, an act establishing a commission on sites, grounds and buildings, did not take from the board of managers of the State Reformatory for Misdemeanants the right to hold monthly meetings, as provided in this section of the State Charities Law. Said section contemplates the existence of an institution in operation, and where, as here, the site has not been selected nor the institution erected, monthly meetings may be dispensed with until the above condition is fulfilled. Rept. of Atty. Gen. (1913) 383.

§ 51. Appointment and removal of managers or trustees.—Each of the state institutions reporting to the fiscal supervisor shall be under the control and management of boards of seven managers to be appointed for each institution by the governor by and with the advice and consent of the senate. The terms of office of said managers shall be seven years and they shall be so appointed that the terms of at least one of the members of each board shall expire on the first Tuesday of February of each year. All vacancies shall be filled by the governor and the person appointed to fill a vacancy in the board of managers of any institution shall hold office for the remainder of the term of the person whom he succeeds. In the discretion of the governor persons of either sex may be appointed as managers of such institutions. Such managers shall serve without compensation but shall be entitled to their actual and necessary traveling expenses in attending meetings of the boards of which they are members. The governor shall have power to remove any member or members of a board of managers for cause after an opportunity to be heard. Managers and trustees now serving as members of boards which have more than seven members may be continued in office until the expiration of the term for which they were appointed but no new appointments shall be made to such boards until their membership is reduced to less than seven. Boards now consisting of less than seven members shall be enlarged by additional appointments to be made before the end of the fiscal year. All persons now serving as members of boards of managers or trustees of the state institutions reporting to the fiscal supervisor shall be eligible to reappointment as managers or trustees, at the discretion of the governor. (*Thus amended by L. 1909, ch. 149.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 50-a, as added by L. 1908, ch. 433.

Managers of the State School for the Blind should be paid actual traveling ex-

§§ 52, 60, 61. Syracuse institution for feeble-minded children. L. 1909, ch. 56.

penses pursuant to this section and not under Education Law, § 947. Rept. of Atty. Genl. (1910) 819.

§ 52. Admission to state charitable institutions.—Except as may otherwise be specifically provided by law all admissions to the state charitable institutions shall be through commitment from the several counties of the state by the county superintendents of the poor of such counties, or other officer acting in that capacity, and from the city of New York by the commissioner of public charities of such city, or his deputy designated for that purpose. In the admission of such patients or inmates the several counties and the city of New York shall, so far as practicable, be entitled annually to the admission of patients or inmates to the said state charitable institutions in the ratio which the population of such counties and the city of New York, respectively, bears to the population of the state as ascertained by the last official census. (*Added by L. 1911, ch. 843.*)

ARTICLE V.

SYRACUSE STATE INSTITUTION FOR FEEBLE-MINDED CHILDREN.

Section 60. Institution for idiots or feeble-minded children.

61. General powers and duties of boards of managers.
62. Salaries of officers.
63. Managers may hold donations in trust.
64. By-laws.
65. Duties of superintendent.
66. Duties of treasurer.
67. Meetings and records of board of managers.
68. Manner of receiving pupils.
69. Discharge of state pupils and payment of expenses.
70. Expense of clothing state pupils.
71. Consent of board of managers to construction of intercepting sewer system.

§ 60. Institution for idiots or feeble-minded children.—The management of the Syracuse state institution for feeble-minded children at Syracuse shall continue to be in a board of managers, appointed in accordance with the provisions of section fifty-one of this chapter. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 60; originally revised from L. 1851, ch. 502, § 1; L. 1862, ch. 220, §§ 1, 2; L. 1891, ch. 51.

§ 61. General powers and duties of boards of managers.—Four members of the board shall constitute a quorum for the transaction of business. The board shall have the general direction and control of all the property and concerns of the institution, and shall take charge of its general interests and see that its general design is carried into effect, according to law and the by-laws, rules and regulations of the institution. It shall appoint a superintendent, who shall be a well educated physician, and a treasurer

L. 1909, ch. 56. Syracuse institution for feeble-minded children. §§ 62-65.

who shall reside in the city of Syracuse, and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and with such sureties as the comptroller shall approve. Such board shall, annually, on or before the first day of February, report to the legislature the condition of the institution. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 61; originally revised from L. 1862, ch. 220, §§ 3, 4; L. 1851, ch. 502, § 5.

§ 62. **Salaries of officers.**—The board shall, from time to time, determine the annual salaries and allowances of the resident officers of the institution in accordance with the provisions of section seventeen of the state finance law. Such salaries and allowances shall be paid monthly by the treasurer of the institution in the same manner as other claims against the institution. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 62; originally revised from L. 1862, ch. 220, §§ 5, 6.

§ 63. **Managers may hold donations in trust.**—The managers may take, and hold in trust for the state, any grant or devise of land, or any donation or bequest of money or other personal property, to be applied to the maintenance and education of feeble-minded children and the general use of the institution.

Source.—Former State Charities L. (L. 1896, ch. 546) § 63; originally revised from L. 1862, ch. 220, § 7.

§ 64. **By-laws.**—The managers may establish by-laws regulating the appointment and duties of officers, teachers, attendants and assistants; fixing the conditions of admission, support and discharge of pupils; and for conducting in a proper manner the business of the institution; and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the institution.

Source.—Former State Charities L. (L. 1896, ch. 546) § 64; originally revised from L. 1862, ch. 220, § 8.

§ 65. **Duties of superintendent.**—The superintendent shall be the chief executive officer of the institution. He shall, subject to the supervision of the board of managers and the by-laws and regulations established by them,

1. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same;

2. Appoint a steward, a medical assistant and a matron, who, with the superintendent, shall constantly reside in the institution or upon premises adjoining, and shall be termed the resident officers thereof;

3. Employ such teachers, attendants and assistants as he may think proper and necessary to economically and efficiently carry into effect the design of the institution; prescribe their several duties and places, fix their compensation, and discharge any of them;

4. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy, in any department of labor and expense;

5. Maintain salutary discipline among all who are in the employ of the institution, and enforce strict compliance with his instructions, and uniform obedience to all the rules and regulations of the institution;

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, with the condition and prospects of the pupils, to be kept regularly, from day to day, in books provided for the purpose;

7. See that such accounts and records shall be fully made up to the first days of January and July in each year, and that the principal effects and results, with his report thereon, be presented to the board at its next meeting. (*Subd. amended by L. 1916, ch. 118.*)

8. Conduct the official correspondence of the institution and keep a record of the applications received, and the pupils admitted;

9. Prepare and present to the board at its annual meeting, when required, an inventory of all personal property and effects belonging to the institution;

10. Account, when required, for the careful keeping and economical use of all furniture, stores and other articles furnished for the institution;

11. Enter in a book to be provided and kept for that purpose, at the time of the admission of each pupil to the institution, a minute, with the date, name, residence of the pupil, and of the persons on whose application he is received; with a copy of the application, statement, certificate and all other papers accompanying such pupil; the originals of which he shall file and carefully preserve.

Source.—Former State Charities L. (L. 1896, ch. 546) § 65; originally revised from L. 1862, ch. 220, §§ 4, 9, 16.

References.—Superintendent to make monthly estimate of expenses. State Charities Law, § 45. Reports to board of supervisors and clerks of cities as to board, etc., *Id.* §§ 450–452.

§ 66. Duties of treasurer.—The treasurer shall,

1. Have the custody of all moneys, notes, mortgages and other securities and obligations belonging to the institution;

2. Keep a full and accurate account of all receipts and payments, as directed in the by-laws, and such other accounts as shall be required of him by the managers;

3. Balance all the accounts on his books on the first day of each July, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and, within three days thereafter, deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a further comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting. (*Subd. amended by L. 1916, ch. 118.*)

L. 1909, ch. 56. Syracuse institution for feeble-minded children. §§ 67, 68.

4. Render a quarterly statement of his receipts and payments to such auditing committee, who shall, in like manner as above, compare, verify, report and certify the result thereof to the managers at their next meeting, who shall cause the same to be recorded in one of the books of the institution;

5. Render a further account of the state of his books and of the funds and other property in his custody, whenever required by the managers;

6. Receive for the use of the institution any and all sums of money which may be due upon any notes or bonds in his hands, belonging to the institution, any and all sums charged and due to the institution for the support of any pupil therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses;

7. Prosecute an action in his name as such treasurer, to recover any sum of money that may be due or owing to the institution;

8. Execute a release and satisfaction of a mortgage, judgment or other lien, in favor of the institution, when paid, so that the same may be discharged from record. (*Section amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 66; originally revised from L. 1862, ch. 220, §§ 14, 15.

References.—Deposit of funds in bank, State Finance Law, § 19. Monthly statements of receipts and expenditures, State Charities Law, § 46.

§ 67. **Meetings and records of board of managers.**—The board of managers shall maintain an effective inspection of the affairs and management of the institution, for which purpose they shall meet at the institution monthly at such times as the by-laws shall provide. The resident officers shall admit the managers into every part of the institution, and shall exhibit to them on demand the books, papers, accounts and writings belonging to the institution, and shall furnish copies, abstracts and reports whenever required by the managers. The board shall keep in a bound book, to be provided for the purpose, a fair and full record of all its doings, which shall be open at all times to the inspection of its members, and all persons whom the governor and either house of the legislature may appoint to examine the same. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 67; originally revised from L. 1862, ch. 220, §§ 11, 12, 13.

§ 68. **Manner of receiving pupils.**—Feeble-minded children may be received into such institution upon the official application of a county superintendent of the poor, or the commissioners of charity of a city of the state having such officers. In the admission of feeble-minded children, preference shall be given to poor or indigent children over all others, and to such as are able or have parents able to support them only in part, over those who are or who have parents who are able to wholly support such children. (*Amended by L. 1910, ch. 449.*)

Source.—Former States Charities L. (L. 1896, ch. 546) § 68; originally revised from L. 1862, ch. 220, § 18, as amended by L. 1878, ch. 72.

§§ 69, 70.

Syracuse institution for feeble-minded children.

L. 1909, ch. 56.

It is the duty of the superintendent of the poor of a county to convey poor, indigent and sick persons from his county to the proper State institutions, and his compensation therefor is included in his salary. *People ex rel. Long v. Supervisors of Westchester* (1909), 65 Misc. 227, 119 N. Y. Supp. 695.

§ 69. Discharge of state pupils and payment of expenses.—When the manager shall direct a state pupil to be discharged from the institution, the superintendent thereof may return him to the county from which he was sent, and the superintendent of the poor of the county shall audit and pay the actual and reasonable expenses of such return. If any town, county or person is legally liable for the support of such pupil, such expenses may be recovered by action in the name of the county by such superintendent of the poor. If the superintendent of the poor neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay the same with interest after thirty days, out of any funds in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 69; originally revised from L. 1862, ch. 220, § 19.

Reference.—Audit and payment of expenses by superintendent of poor, Poor Law, § 3.

§ 70. Expense of clothing state pupils.—The supervisors of any county from which state pupils may have been received shall cause to be raised annually, while such pupils remain in the institution, the sum of twenty dollars for each pupil, for the purpose of furnishing suitable clothing, which shall be paid to the treasurer of the institution on or before the first day of April. The superintendent may agree with the parent, guardian or committee of a feeble-minded child, or with any person, for the support, maintenance and clothing of such child at the institution, upon such terms and conditions as may be prescribed in the by-laws or approved by the managers. Every parent, guardian, committee, or other person applying for the admission into the institution of a feeble-minded child who is able, or whose parents or guardians are of sufficient ability to provide for his maintenance therein, shall at the time of his admission deliver to the superintendent an undertaking, with one or more sureties, to be approved by the managers, conditioned for the payment to the treasurer of the institution of the amount agreed to be paid for the support, maintenance and clothing of such feeble-minded child, and for the removal of such child from the institution without expense thereto, within twenty days after the service of the notice hereinafter provided. If such child, his parents or guardians are of sufficient ability to pay only a part of the expense of supporting and maintaining him, such undertaking shall be only for his removal from the institution as above mentioned; and the superintendent may take security by note or other written agreement, with

L. 1909, ch. 56.

Custodial asylum for feeble-minded women.

§§ 71, 80.

or without sureties, as he may deem proper, for such part of such expenses as such child, his parents or guardians are able to pay, subject, however, to the approval of the managers in the manner that shall be prescribed in the by-laws. Notice to remove a pupil shall be in writing, signed by the superintendent and directed to the parents, guardians, committee or other person upon whose request the pupil was received at the institution, at the place of residence mentioned in such request, and deposited in the post-office at Syracuse with the postage prepaid. If the pupil shall not be removed from the institution within twenty days after service of such notice, according to the conditions of the agreement and undertaking, he may be removed and disposed of by the superintendent as herein provided in relation to state pupils, and the provisions of this article respecting the payment and recovery of the expenses of the removal and disposition of a state pupil shall be equally applicable to expenses incurred under this section. This section, as amended, shall supersede and control any other provision of this chapter inconsistent herewith in its application to such institution. (*Amended by L. 1911, ch. 609.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 70; originally revised from L. 1862, ch. 220, § 17, amended by L. 1867, ch. 739, § 20.

References.—Audit of accounts by board of supervisors, County Law, § 12. Accounts to be itemized and verified, *Id.* § 24.

§ 71. **Consent of board of managers to construction of intercepting sewer system.**—The board of managers of the Syracuse State Institution for Feeble-Minded Children shall have power and authority to grant to the city of Syracuse an easement to lay, construct and maintain as a part of the general intercepting sewer system of said city a sewer or sewers in, through, under and along the lands of said *institutions in the city of Syracuse, and to change the channel of Harbor brook through the lands of said institution upon such conditions as said board may prescribe. (*Added by L. 1910, ch. 376.*)

ARTICLE VI.

STATE CUSTODIAL ASYLUM FOR FEEBLE-MINDED WOMEN.

Section 80. Established as a corporation.

81. Board of managers.

82. Officers.

83. Treasurer to give undertaking.

§ 80. **Established as a corporation.**—The asylum established at Newark, Wayne county, for feeble-minded women is hereby continued as a body corporate and shall be known as the state custodial asylum for feeble-minded women.

* So in original.

§§ 81-83, 90.

Rome state custodial asylum.

L. 1909, ch. 56.

Source.—Former State Charities L. (L. 1896, ch. 546) § 80; originally revised from L. 1885, ch. 281, § 1.

§ 81. **Board of managers.**—Such asylum shall continue to have a board of seven managers, three of whom shall be women, and shall be appointed in accordance with the provisions of section fifty-one of this chapter. The board of managers shall have the custody and control of all property and power to make all rules for the management and control of the affairs of the asylum. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 547) § 81; originally revised from L. 1885, ch. 281, § 2, in part.

Sale of water.—Although there is no statutory authority for the sale of water from a state plant to a city, village, corporation or individual, the managers of a state institution may in the case of an emergency allow a village to use the surplus waters upon a definite understanding that such use is only temporary and can be discontinued at any time. Rept. of Atty. Genl. (1909) 695.

§ 82. **Officers.**—The board of managers shall appoint, of their number, a president, a secretary and a treasurer. They shall appoint a superintendent, a matron, and employ all assistants that may be necessary for the proper management of the asylum.

Source.—Former State Charities L. (L. 1896, ch. 546) § 82; originally revised from L. 1885, ch. 281, § 2, in part.

§ 83. **Treasurer to give undertaking.**—The treasurer shall, before he receives any money, give an undertaking to the people of the state, with such sureties and in such amount as the board of managers shall require and to be approved by the comptroller, to the effect that he will faithfully perform his trust as such treasurer.

Source.—Former State Charities L. (L. 1896, ch. 546) § 83; originally revised from L. 1885, ch. 281, § 2, in part.

ARTICLE VII.

ROME STATE CUSTODIAL ASYLUM.

Section 90. Asylum for feeble-minded persons and idiots.

91. Appointment of managers.

92. Powers and duties of managers.

93. Superintendent, qualifications, powers and duties.

94. Commitments to asylum; maintenance.

95. * Detention and discharge of inmates.

§ 90. **Asylum for feeble-minded persons and idiots.**—The asylum established at Rome for the custody, maintenance, training and treatment of the custodial class of feeble-minded persons and idiots is hereby continued and shall be known as the Rome state custodial asylum.

* Editors' title.

L. 1909, ch. 56.

Rome state custodial asylum.

§§ 91-93.

Source.—Former State Charities L. (L. 1896, ch. 546) § 90, as amended by L. 1904, ch. 462; originally revised from L. 1895, ch. 59, § 1.

§ 91. **Appointment of managers.**—Such asylum shall be under the control and management of a board of seven managers, appointed in accordance with the provisions of section fifty-one of this chapter. They shall appoint one of their number as president, another as vice-president and another as secretary. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 91, as amended by L. 1904, ch. 462; originally revised from L. 1895, ch. 59, § 2.

§ 92. **Powers and duties of managers.**—The board of managers shall,
1. Have the general direction and control of all the property and concerns of the asylum, take charge of its general interests and see that its design is carried into effect, according to law and its by-laws, rules and regulations.

2. Establish by-laws, rules and regulations, subject to the approval of the state board of charities, for the internal government, discipline and management of the asylum.

3. Maintain an effective inspection of the asylum, for which purpose a majority of the managers shall visit the asylum at least monthly and at such other times as may be prescribed in the by-laws. The superintendent or other officer in charge shall admit such managers or manager into every part of the asylum and its buildings and exhibit to them on demand all the books, accounts and writings belonging to the asylum and pertaining to its interests, and furnish copies, abstracts and reports whenever required by them.

4. Annually, on or before the fifteenth day of January, report to the legislature for the preceding fiscal year the affairs and condition of the asylum with full and detailed estimates of the next appropriations required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects.

5. If lands are required for the use of the asylum, acquire the same by purchase, gift or condemnation. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 92, as amended by L. 1904, ch. 462; originally revised from L. 1895, ch. 59, §§ 2, 3, 4, 5.

A parol of inmates is not contemplated by the statute or authorized by the state board of charities and the fiscal supervisor cannot approve expense items therefor. Rept. of Atty. Genl. (1909) 699.

§ 93. **Superintendent, qualifications, powers and duties.**—The superintendent shall be appointed by the board of managers in accordance with the laws of this state after a civil service examination which shall be held upon the lines of qualification, experience and training herein provided. He shall be a resident of this state, a well educated physician and graduate of a legally incorporated medical college, and shall have had a suitable

experience and training of not less than three years in the care and treatment of the mentally defective classes, epileptic or insane. He shall be the chief executive officer of the asylum, and shall manage the institution in conformity to rules and regulations adopted by the board of managers. He shall appoint the assistant physicians, steward, clerk, a bookkeeper, matron and all subordinate employees, and he shall discharge them when, in his judgment, it may be necessary to do so for the good of the institution.

Source.—Former State Charities L. (L. 1896, ch. 546) § 93, as amended by L. 1904, ch. 462; originally revised from L. 1895, ch. 59, § 3.

Operation upon inmates.—The superintendent of the Rome State Custodial Asylum is authorized to perform an operation for circumcision upon an inmate of the asylum, provided the operation is not inherently dangerous and will clearly serve to allay or to effect a cure of the disease or disorder with which he is afflicted or materially to promote his health. Rept. of Atty. Genl. (1911) 683.

Section cited.—Matter of Lake v. Stoddard (1908), 125 App. Div. 305, 109 N. Y. Supp. 523.

§ 94. **Commitments to asylum; maintenance.**—The superintendents of the poor of the various counties of the state may commit to such asylum, if vacancies exist therein, such feeble-minded persons and idiots residing in their respective counties, or who are inmates of county almshouses, according to the by-laws and regulations of the asylum. All commitments shall be in the form prescribed by the board of managers. Insane idiots or epileptics shall not be committed to such asylum. The maintenance of the institution and inmates thereof shall be in charge upon the state, except that a feeble-minded person or idiot who is possessed of sufficient property to pay for maintenance in the asylum, or the farther, mother, committee or guardian who is responsible for the care of such feeble-minded person and is financially able in the judgment of the board of managers to reimburse the state in addition to a proper financial ability to support himself and remaining family, shall pay the treasurer of the asylum yearly an amount equal to the yearly per capita cost of such maintenance as determined by the board of managers yearly, and upon the refusal of such parent, committee or guardian to make payment as herein provided the superintendent of such asylum may bring action in the name of the asylum to recover for such reimbursement to the state for such maintenance. Where it becomes necessary to have a committee of a feeble-minded incompetent person appointed to legally settle an estate in which such incompetent feeble-minded person has a legal or financial interest, the superintendent of the asylum is hereby empowered to make application to a court of competent jurisdiction for the appointment of such committee. (*Amended by L. 1914, ch. 165.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 94, as amended by L. 1904, ch. 462; originally revised from L. 1895, ch. 59, §§ 6, 7.

The State should be reimbursed for maintenance of inmates where it is discovered that either the inmate or his father, mother or guardian has sufficient property to pay, in full or in part, the per capita cost of such maintenance. Rept. of Atty. Genl. (1914) 376.

L. 1909, ch. 56.

Rome state custodial asylum.

§ 95.

A patient, not indigent nor an inmate of a county almshouse when committed to the Rome State Custodial Asylum by a superintendent of the poor, should be discharged by the board of managers, unless a vacancy exists in the institution and provision is made for the cost of her maintenance. Rept. of Atty. Genl. (1912) 425.

Section cited.—People ex rel. Long v. Supervisors of Westchester (1909), 65 Misc. 227, 119 N. Y. Supp. 695.

§ 95. *Detention and discharge of inmates.—The following procedure for the detention and discharge of inmates in the Rome State Custodial Asylum is hereby provided:

1. The Rome State Custodial Asylum shall receive, when it has accommodations therefor, such persons of the class designed to be maintained in said asylum, as shall be duly committed thereto in accordance with the provisions of law and the rules and regulations of said asylum, and it shall be the duty of said asylum, and for that purpose it is hereby vested with the authority to detain all such persons so committed, including the right to arrest and return any who may escape therefrom, until discharged by the board of managers of said asylum, or by an order of the supreme court of the state of New York, obtained as hereinafter provided.

2. Any inmate of said institution, or any person or corporation interested in any inmate as next of kin, or otherwise, may apply to the board of managers for the discharge of such inmate, by presenting to the said board of managers a petition in writing, duly verified as a pleading in the supreme court, which petition shall set forth the interest of the petitioner in the inmate, if the same is presented by any other person than the inmate, the grounds or reasons for asking for such discharge and the home, place or surroundings in which it is proposed or intended to place the said inmate, if discharged, and such other facts as may tend to throw light upon the subject of the application.

3. Such petition may be presented at any legally constituted meeting of the board of managers of said asylum, and shall be acted upon by the board at such meeting, or as soon thereafter as practicable, and the prayer of the petition shall be either granted or refused by the said board of managers.

4. In case the said petition for discharge is denied, the action of the board of managers shall be expressed in a resolution to be adopted by the said board, and said resolution shall embody the grounds or reasons of said board for refusing to grant such discharge, and a copy of such resolution shall be mailed or delivered forthwith to the petitioner, or the attorney presenting the petition to the board.

5. At any time within thirty days after the mailing or delivery of said resolution, as prescribed in the last paragraph, the petitioner may cause a notice in writing to be served upon the superintendent of the said asylum and the attorney-general of the state of New York, to the effect that the

* Editors' title.

said action of the board of managers shall be reviewed by the supreme court of the state of New York at a special term thereof to be held in the judicial district in which the said asylum is located, not less than eight days after such notice is served, and the notice served upon the attorney-general shall be accompanied by true copies of all papers used upon the application before the board, and of the resolution adopted by the board on said application, and any other papers or documents intended to be presented to the court upon said hearing.

6. Upon receipt of such notice and papers, it shall be the duty of the attorney-general to appear in said proceeding and upon said hearing in court, on behalf of the state of New York, and to render such legal service and give such counsel as may be necessary to fully advise the court and protect the interests of the state of New York in the premises.

7. The superintendent and the board of managers of said asylum shall furnish to the attorney-general, upon his application, any information, facts or data in their possession, which he may require to use upon said hearing.

8. The order granted by the court upon such hearing shall be entered in the office of the clerk of the county of Oneida, and a certified copy thereof furnished to the superintendent of the said asylum, and shall be recorded in the records of the said asylum, and the said inmate shall be discharged or detained according to the terms of said order.

9. The superintendent may grant any inmate of said institution a parole, or leave of absence under such rules and regulations as the board of managers of said asylum shall adopt to govern such procedure.

10. The superintendent may admit to the asylum temporarily, without commitment, under such rules and regulations as the board of managers may prescribe, for purposes of observation, such children or adults as are suspected of being feeble-minded or idiotic; to ascertain whether or not such person is actually mentally defective and a proper case for care, treatment and training in an institution for the feeble-minded or idiots.

11. When desirable for the best interests of the state, as well as the wards thereof, the superintendent, subject to the approval of the board of managers, may grant to groups of inmates in colonies on rented premises or on land owned by the state, parole or leave of absence to do domestic work under the direction of the superintendent, or agricultural work under direction of the state department of agriculture, or reforestation and forestry work under the direction of the conservation commission, and any expense connected therewith shall be a charge upon the regular maintenance of the asylum. (*Subds. 1-8 added by L. 1909, ch. 339; subds. 9, 10 added by L. 1912, ch. 448; subd. 11 added by L. 1916, ch. 71.*)

Admission of feeble-minded children.—A feeble-minded child under the age of sixteen years, who is under such improper or insufficient guardianship as to endanger the morals, health or general welfare of said child, may be admitted to the Rome State Custodial Asylum, upon order of the County Court of Monroe

L. 1909, ch. 56.

Craig colony for epileptics.

§§ 100-102.

County, if a vacancy in the asylum exists after providing for the custody of indigent feeble-minded persons and idiots, in the discretion of the Board of Managers, and under such regulations as to payment and otherwise as such board shall prescribe. Rept. of Atty. Genl. (1912) 3.

ARTICLE VIII.

CRAIG COLONY FOR EPILEPTICS.

- Section 100. Establishment and objects of colony.
- 101. Managers of the colony.
 - 102. Buildings and improvements.
 - 103. Powers and duties of managers.
 - 104. Annual report.
 - 105. Donations in trust.
 - 106. Officers of the colony.
 - 107. Duties of the superintendent.
 - 108. Duties of agent in the capacity of treasurer.
 - 109. Admission, detention and discharge of patients.
 - 110. Support of state patients.
 - 111. Apportionment of state patients.
 - 112. Support of private patients.
 - 113. Discharge of patients.
 - 114. Notice of opening of colony. (Repealed.)
 - 114. Reimbursement for maintenance expenses.
 - 115. Sales of products.
 - 117. Designation of special policemen.

§ 100. **Establishment and objects of colony.**—The colony for epileptics established at Sonyea, Livingston county, is hereby continued, and shall be known as the Craig colony for epileptics, in honor of the late Oscar Craig, of Rochester, New York, whose efficient and gratuitous public services in behalf of epileptics and other dependent unfortunates the state desires to commemorate. The objects of such colony shall be to secure the human, curative, scientific and economical care and treatment of epileptics, exclusive of insane epileptics.

Source.—Former State Charities L. (L. 1896, ch. 546) § 100; originally revised from L. 1894, ch. 363, §§ 1, 2, in part.

Section cited.—Matter of Moore (1910), 66 Misc. 116, 122 N. Y. Supp. 828, *affd.* (1911), 143 App. Div. 973, 128 N. E. 1135.

§ 101. **Managers of the colony.**—There shall be a board of seven managers of the Craig colony, appointed in accordance with the provisions of section fifty-one of this chapter. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 101; originally revised from L. 1894, ch. 363, § 3, as amended by L. 1895, ch. 439, § 1.

§ 102. **Buildings and improvements.**—The board of managers shall receive patients as rapidly as the condition of the colony will admit. They shall utilize all buildings and improvements on the land so conveyed, and construct such additional buildings as may be necessary, and make further

improvements upon plans adopted by them and approved by the governor, the president of the state board of charities and the fiscal supervisor, or a majority of such officers and for which appropriations are made by the legislature. There shall be provided for such colony an abundant supply of wholesome water, sufficient means for drainage and the disposal of sewage and a proper sanitary system. All of which shall be done under the direction of the board of managers in accordance with plans adopted by them, and approved by the governor, the president of the state board of charities and the fiscal supervisor, or a majority of such officers. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 102; originally revised from L. 1894, ch. 363, §§ 2, 5.

Improvements are subject to the approval of the State Board of Charities. Rept. of Atty. Genl. (1898) 300.

§ 103. Powers and duties of managers.—Four members of the board of managers shall constitute a quorum for the transaction of business. The board shall:

1. Elect from their number a president and secretary, and may adopt a seal for the use of the colony.

2. Have the government, direction and control of the patients, officers and employees of the colony and of all the property and concerns thereof.

3. Subject to the revision and approval of the fiscal supervisor purchase supplies for the use of the colony and such raw materials as may be necessary for the trades and industries pursued therein, and provide for the disposal of the manufactured products and the product of the land.

4. Employ the assistants necessary for the government of the colony, and to educate and properly use the labor of the patients.

5. Establish such by-laws, rules and regulations as they may deem necessary regulating the appointment, powers and duties of officers, teachers, attendants and assistants, fixing the condition of admission, treatment, education, support, custody, discipline and discharge of patients, conducting in a proper manner the business of the colony, and regulating the internal government, discipline and management of the colony.

6. Maintain an effective inspection of the affairs and management of the colony, for which purpose they shall meet at the institution at least monthly and at such other times as the by-laws shall prescribe. Their annual meeting shall be held on the second Tuesday of October.

7. Copy in a bound book, a fair and full record of all its proceedings, which shall be open at all times to the inspection of its members and officers of the state board of charities, and all persons whom the governor or either house of the legislature may appoint to examine the same. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 103, as amended by L. 1898, ch. 359; originally revised from L. 1894, ch. 363, § 8, as amended by L. 1895, ch. 439.

The board of managers may prescribe reasonable rules and regulations as to the

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keeping of patients and as to responsibility for their escape. They may provide that patients be retained in the Colony for a reasonable time, even against the wishes of their friends or relatives. Rept. of Atty. Genl. (1909) 844.

Patients cannot be detained against their will. Rept. of Atty. Genl. (1898) 156; Rept. of Atty. Genl. (1899) 242.

A law authorizing the detention of epileptics in the Craig Colony against their will would be unconstitutional. Rept. of Atty. Genl. (1910) 934.

Power of watchman of Colony to detain or arrest prisoners or other persons disobeying rules on premises of railroad running through the grounds of the Colony. Rept. of Atty. Genl. (1909) 847.

Contracts; power to let.—Board of managers may delegate to a committee the power to open bids and let contracts. Rept. of Atty. Genl. (1902) 275.

§ 104. **Annual report.**—The board of managers of the Craig colony shall annually, on or before the fifteenth day of January, for the preceding fiscal year, report to the legislature the affairs and conditions of the colony, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects, as also for the erection of additional buildings needed by reason of overcrowding, and in order to prevent the same, or to meet the need of sufficient accommodations for patients seeking admission to the colony. The said colony shall be subject to the visitation and to the general powers of the state board of charities. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 104; originally revised from L. 1894, ch. 363, § 7.

Consolidators' note.—Word "improvement" omitted and "improvements" inserted, as the balance of context shows that it should be plural.

§ 105. **Donations in trust.**—The managers may take and hold in trust for the state any grant or devise of land, or any gift or bequest of money or other personal property, or any donation, to be applied, principal or income, or both, to the maintenance and education of epileptics and the general uses of the colony.

Source.—Former State Charities L. (L. 1896, ch. 546) § 105; originally revised from L. 1894, ch. 363, § 6.

§ 106. **Officers of the colony.**—The board of managers shall appoint a superintendent of the colony, who shall be a well educated physician and a graduate of a legally chartered medical college, with an experience of at least five years in the actual practice of his profession, and who shall be certified as qualified by the civil service commission, after a competitive examination, and an agent who shall also be the treasurer of the colony and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and form and with such sureties as the comptroller shall approve. Such officers may be discharged or sus-

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pended at any time by such board, in its discretion. The superintendent shall constantly reside in the colony.

Source.—Former State Charities L. (L. 1896, ch. 546) § 106, as amended by L. 1905, ch. 459; originally revised from L. 1893, ch. 363, § 9.

§ 107. Duties of the superintendent.—The superintendent shall be the chief executive officer of the colony, and subject to the supervision and control of the board of managers, he shall:

1. Oversee and secure the individual treatment and personal care of each and every patient of the colony while resident therein and the proper oversight of all the inhabitants thereof.

2. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same.

3. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy in any department of labor or education or treatment of patients.

4. Appoint a steward and a matron and employ a bookkeeper and such teachers, assistants and attendants as he may think necessary to economically and efficiently carry into effect the design of the colony; prescribe their duties and places, and, subject to the approval of the board of managers, fix their compensation in accordance with the provisions of section seventeen of the state finance law. The steward and matron shall reside in the colony.

5. Maintain salutary discipline among all employees, patients and inhabitants of the colony, have the custody and control of every patient admitted to the colony until properly discharged, and subject to the regulations of the managers, restrain and discipline any patient in such manner as he may judge is for the welfare of the patient and the proper conduct of the colony, and enforce strict compliance with the instructions and uniform obedience to all the rules and regulations of the colony.

6. Cause full and fair accounts and records of the entire business and operations of the colony with the condition and prospects of the patients, to be kept regularly, from day to day, in books provided for that purpose.

7. See that such accounts and records shall be fully made up to the first days of January, April, July and October, in each year, and that the principal facts and results, with his report thereon, be presented to the board of managers at its meetings.

8. Conduct the official correspondence of the colony, and keep a record or copy of all letters written by himself and by his clerks and agents, and files of all letters received by him or them.

9. Prepare and present to the board, at its annual meeting, a true and perfect inventory of all the personal property and effects belonging to the colony, and account, when required by the board, for the careful

keeping and economical use of all furniture, stores and other articles furnished for the colony.

10. Keep a record of all applications for admission of patients, and enter in a book to be provided and kept for that purpose, at the time of the admission of each patient to the colony, a minute, with the date, name, residence of the patient, and of the persons on whose application he is received, with a copy of the application, statement, certificate and all other papers received relating to such epileptic patient, the originals of which he shall file and carefully preserve, and certified copies whereof he shall forthwith transmit to the state board of charities.

11. Have power, subject to the supervision and control of the board of managers, in case of the death of any patient at such institution who shall have been maintained therein wholly at public expense, to make or cause to be made at the said Craig colony by a member or members of its medical staff an autopsy on the body of such patient, provided that such autopsy be made in such manner as will cause the least possible mutilation, and provided also that the said Craig colony shall print conspicuously upon all application blanks used in admitting patients to the institution the fact that the officers of said colony have the above stated powers in relation to the making of autopsies. (*Section amended by L. 1910, ch. 449. Subd. 11 amended by L. 1914, ch. 40.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 107, as amended by L. 1898, ch. 359; L. 1904, ch. 545; L. 1905, ch. 458; originally revised from L. 1894, ch. 363, §§ 9, 10.

Operation upon inmates.—A patient in the Craig Colony may not be operated upon without his consent either express or implied. A consent, however, to the performance of even a major operation on an inmate may be implied where an emergency arises calling for immediate action for the preservation of the life or health of the patient and it is impracticable to obtain his express consent or the consent of any one authorized to speak for him. Rept. of Atty. Genl. (1912) 27.

Autopsies cannot be performed on patients dying at the Colony where their relatives or friends cannot be located and where such patients were admitted to the Colony prior to the taking effect of L. 1905, ch. 458. Rept. of Atty. Genl. (1909) 845.

Autopsy cannot be performed upon the brain of an epileptic, admitted prior to the taking effect of L. 1905, ch. 458. Rept. of Atty. Genl. (1905) 504. Superintendent may perform surgical operations, but cannot make an autopsy without the consent of relatives. Rept. of Atty. Genl. (1899) 202.

Correspondence of inmates.—Board of managers and superintendent may exercise reasonable supervision over correspondence of inmates. Rept. of Atty. Genl. (1901) 317.

§ 108. Duties of agent in the capacity of treasurer.—The agent in the capacity of treasurer, among his other duties, shall:

1. Have the custody of all moneys received from the comptroller for the use of the colony, and all other money, notes, mortgages and other securities and obligations belonging to the colony.

2. Keep a full and accurate account of all receipts and payments as

provided by law, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his books on the first day of each July, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and within five days thereafter deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting. (*Subd. amended by L. 1916, ch. 118.*)

4. Render a quarterly statement of his receipts and payments to such auditing committee who shall, in like manner as above, compare, verify, report and certify the result thereof to the managers at their next meeting, who shall cause the same to be recorded in one of the books of the colony.

5. Render a further account of the state of his books and of the funds and other property in his custody, whenever required by the managers.

6. Receive, for the use of the colony, money which may be paid upon obligations or securities in his hands belonging to the colony; and all sums paid to the colony for the support of any patient therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses; and money paid to the colony from any other source.

7. Prosecute an action in the name of the colony to recover money due or owing to the colony, from any source; including the bringing of suit for breach of contract between private patients or their guardians and the managers of the colony.

8. Execute a release and satisfaction of a mortgage, judgment, lien or other debt when paid.

9. Pay the salaries of the superintendent, treasurer, matron, steward and of all employees of the colony, and the disbursements of the officers and members of the board as aforesaid as provided by law. (*Section amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 108, as amended by L. 1905, ch. 459; originally revised from L. 1894, ch. 393, § 11.

References.—Monthly statements of receipts and expenditures, State Charities Law, § 46. Purchases, how made, Id. § 48. Deposit of money in banks, State Finance Law, §§ 10, 11.

§ 109. Admission, detention and discharge of patients.—1. The superintendent of the poor or the proper city poor law officer shall have two qualified physicians examine each eligible candidate for admission to the Craig Colony for Epileptics as to mental competency and have them state in writing, under affidavit on prescribed forms the results of such examination of the applicant. Such examiner shall not be a relative of the applicant or a manager, superintendent or be otherwise connected with the Craig Colony for Epileptics and shall be a reputable physician, a graduate of an incorporated medical school and shall be in the actual practice of his profession

for at least three years. The superintendent of the poor or city poor law officer mentioned under the laws governing the colony shall then if the applicant appears incompetent make application to a judge of a court of record of the county or a justice of the supreme court of the judicial district in which the alleged incompetent epileptic resides or may be, for the purpose of having the incompetency of such applicant determined in the usual manner. If the applicant is adjudged incompetent he shall then be committed by the court to the Craig Colony for Epileptics under the provisions of this act.

2. All applicants for admission to the Craig Colony for Epileptics, who are alleged to be incompetent mentally shall have an opportunity for a hearing before the court to whom the application is to be made for the commitment of the applicant to the said Craig Colony for Epileptics.

Notice of the application for commitment shall be served personally at least three days before making such application, upon the epileptic alleged to be incompetent and also upon the husband or wife, father or mother or next of kin to such alleged incompetent epileptic, if there be any such known to be residing within the county and if not, upon the person with whom such alleged incompetent epileptic may at the time reside.

The judge, to whom the application is to be made, may dispense with such personal service or may direct substitute service to be made upon some person to be designated by him. He shall in the certificate to be attached to the application form state his reason for dispensing with personal service, if such service is not deemed necessary or advisable. The judge to whom such application is made, may if no demand is made for a hearing in behalf of the alleged incompetent, proceed forthwith to determine the question of incompetency and if satisfied that the alleged epileptic is incompetent may issue an order for the commitment of such person to the custody of the Craig Colony for Epileptics. Such judge may in his discretion require other proofs in addition to the petition and certificate of the medical examiner and before mentioned poor law officer.

3. The order of commitment shall be accompanied by a written statement of the judge as to the financial condition of the incompetent epileptic and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of the Craig Colony for Epileptics shall, whenever a vacancy exists in the quota allowed the county of which the applicant is a legal resident, admit the applicant. The petition of the applicant, the certificate of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee, and the order of commitment shall be presented at the time of the commitment to the superintendent of Craig Colony for Epileptics and verbatim copies shall be forwarded by such superintendent and filed in the office of the state board of charities. The superintendent of Craig Colony for Epileptics may refuse to receive any person upon any such order, if the papers required to be presented shall not comply

with the provisions of this section, or if in his judgment, such person is not epileptic within the meaning of this statute, or if received, such person may be discharged.

If a person ordered to be committed, pursuant to this chapter, or any friend in his behalf, is dissatisfied with the final order of a judge or justice committing him, he may within ten days after the making of such order appeal therefrom to a justice of the supreme court other than the justice making the order, who shall cause a jury to be summoned as in case of proceedings for the appointment of a committee for the incompetent person, and shall try the question of such incompetency in the same manner as in proceedings for the appointment of a committee. If the verdict of the jury be that such person is incompetent, the justice shall certify that fact and make an order of commitment as upon the original hearing. Such order shall be presented, at the time of the commitment of such incompetent epileptic, to the superintendent in charge of said colony to which the person is committed, and a copy thereof shall be forwarded to the state board of charities by such superintendent or person in charge and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice, and after a hearing, with provisions made therein for such temporary care or confinement of the alleged incompetent epileptic as may be deemed necessary. If a judge shall refuse to grant an application for an order of commitment of an incompetent epileptic proved to be dangerous to himself or others, if at large he shall state his reason for such refusal in writing, and any person aggrieved thereby may appeal therefrom in the same manner and under like conditions as from an order of commitment.

4. The costs necessarily incurred in determining the question of the incompetency of a poor or indigent epileptic under this chapter including the fees allowed by the judge or justice ordering the commitment to the medical examiner or medical witnesses called by him and other necessary expenses, and in securing the admission of such person into said colony and the expense of providing proper clothing for such person in accordance with the rules and regulations adopted by the state board of charities, shall be a charge upon the town, city or county in which the alleged incompetent epileptic shall have gained a legal settlement under the provisions of the poor law and in case such person has gained no such legal settlement, then such expense shall be a charge upon the county in which the incompetent person may be at the time of the commitment; but in the city of New York all fees of medical examiners and medical witnesses appointed or called by a judge of any court of said city for the purpose of determining the question of the incompetency of such person, and not heretofore paid, may be audited and allowed in the first instance either by the judge or justice appointing the medical examiners or by the comptroller of said city and shall be paid by the chamberlain of said city on the warrant of the comptroller

from the court fund and charged to the proper county within said city. If the person sought to be committed is not a poor or indigent person, the costs and expenses of the proceedings to determine his incompetency and secure his commitment paid by any town, city or county may be collected by it from the estate of such person, or from the persons legally liable for his maintenance.

5. It shall be the duty of said colony, and for that purpose it is hereby vested with the authority to detain all such mentally incompetent epileptics as shall be duly committed thereto in accordance with the provisions of law and the rules and regulations of said colony including the right to arrest and return any who may escape therefrom, until duly discharged by the board of managers of said colony, or by an order of the supreme court.

6. The superintendent of the Craig Colony for Epileptics shall be given power under this act to secure the commitment of such of its inmates who, after being admitted in any other manner than by commitment, prove after examination to be mentally incompetent, after an opportunity has been given the relatives or legal guardian of such patient to be heard, such commitment to be made by the court in the case of such an individual the same as in case of a person regularly committed at the time of admission to the colony.

7. It shall be the duty of the superintendent of the poor in every county and of the poor authorities of every city to furnish annually to the state board of charities, a list of all epileptics in their respective jurisdictions, so far as the same can be ascertained with such particulars as to the condition of such epileptic as shall become a charge for his or her maintenance on any of the towns, cities or counties of this state. It shall be the duty of all poor authorities of such city, and of the county superintendent of the poor, and of the supervisors of such county, to place such epileptics in the said colony, as soon as accommodations are available. Any parent, guardian or friend of an epileptic within this state may make application to the poor authorities of any city or the superintendent of the poor of any county where such epileptic resides, showing by satisfactory affidavit or other proof, that the health, morals, comfort or welfare of such epileptic may be endangered or not properly cared for, if not placed in such colony; and thereupon it shall be the duty of such officer or board to whom such application may be made to place such epileptic in said colony when accommodations are available. The board of supervisors shall provide for the support of such patients, except those properly supported by the state, and may recover for the same from the parents or guardians. Preference shall always be given to poor or indigent epileptics, or the epileptic children of poor or indigent persons, over all others; and preference shall always be given to such as are able to support themselves only in part, over those who are able or who have parents who are able wholly to furnish such support.

8. There shall be received and gratuitously supported in the colony,
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epileptics of normal mentality residing in the state, who, if of age, are unable, or if under age whose parents or guardians are unable to provide for their support therein. They shall be designated state patients. All such epileptics of normal mentality shall be received into the colony, only upon the official application of a county superintendent of the poor, or the poor authorities of any city upon forms approved by the state board of charities containing the written request of the persons desiring to send them, stating the name, age, place of nativity, if known, the town, city or county in which such applicants respectively reside and the ability of their respective parents or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the applicant and the persons requesting their admission; which statement in all cases must be verified by the affidavits of the petitioners and accompanied by the opinions regarding epilepsy and mental competency, with affidavit, of a qualified physician; all residents of the same county with the epileptic patient and all acquainted with the facts and circumstances stated. An epileptic of proved normal mentality thus received shall not be detained after he or his relative nearest of kin or legal guardian, if a minor, shall have given due notice in writing of his or their intention to leave or remove him from the colony. Such additional number of epileptics as can be conveniently accommodated shall be received into the colony by the managers on such terms as shall be just and shall be designated as private patients. (*Added by L. 1914, ch. 39, in place of former § 109, repealed by same act.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 109; originally revised from L. 1894, ch. 363, § 12.

References.—Reports to be submitted to clerks of boards of supervisors, State Charities Law, § 451. Verified accounts against counties, cities and towns, *Id.* § 452. Audit of accounts of boards of supervisors, County Law, § 12. Accounts to be in items and verified, *Id.* § 24.

Section cited.—*People ex rel. Long v. Supervisors of Westchester* (1909), 65 Misc. 227, 119 N. Y. Supp. 695.

§ 110. **Support of state patients.**—State patients shall be provided with proper board, lodging, medical treatment, care and tuition; and the managers of the colony shall receive for each state patient supported therein a sum not exceeding two hundred and fifty dollars per annum; which payments, if any, shall be made by the treasurer of the state, on the warrant of the comptroller, to the treasurer of the said colony, on his presenting the bill of the actual time and number of patients in the colony, signed and verified by the superintendent and treasurer of the colony and by the president and secretary of its board of managers, and approved by the fiscal supervisor. The supervisors of any county from which such patients may have been received into the colony shall cause to be raised annually, while such patients remain in the colony, the sum of thirty dollars for each of such state patients for the purpose of furnishing suitable clothing, and the

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same shall be paid to the treasurer of the colony on or before the first day of April of each year. (*Thus amended by L. 1909, ch. 149.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 110; originally revised from L. 1894, ch. 363, § 13.

Mandamus may be maintained against a board of supervisors to recover moneys due to the Craig Colony for clothing, etc., furnished patients. Rept. of Atty. Genl. (1909) 846.

§ 111. **Apportionment of state patients.**—Whenever applications are made at one time for admission of more state patients than can be properly accommodated in the colony, the managers shall so apportion the number received, that each county may be represented in a ratio of its dependent epileptic population to the dependent epileptic population of the state, as shown by statistics furnished by the state board of charities.

Source.—Former State Charities L. (L. 1896, ch. 546) § 111; originally revised from L. 1894, ch. 363, § 16.

§ 112. **Support of private patients.**—The superintendent of the colony may agree with any epileptic who may be of age, or his committee or guardian, or with the parents, guardian or committee of any epileptic child, or with any person for the entire or partial support, maintenance, clothing, tuition, training, care and treatment of such epileptic in the colony, on such terms and conditions as may be prescribed in the by-laws or approved by the managers. Every patient, guardian, committee or other person applying for the admission into the colony of an epileptic who is, or whose parents or guardians are of sufficient ability to provide for his support and maintenance therein shall, at the time of his admission, execute a bond to the treasurer of the colony with one or more sureties, to be approved by the superintendent and treasurer, in such sum as the managers shall prescribe, to the effect that the obligors will pay to the treasurer of the colony all sums of money at such time or times as shall be so agreed upon, and remove such epileptic from the colony free of expense to the managers within twenty days after the service of the notice hereinafter provided for. If such epileptic, his parents or guardian are of sufficient ability to pay only a part of the expenses of supporting and maintaining him at the institution, such undertaking shall be only for such partial support and maintenance and for removal from the institution as above mentioned; and the treasurer may take security by such obligation or in his discretion by note or other written agreement, with or without sureties, as he may deem proper, for such part of such expenses as the epileptic, his parents or guardians are able to pay; but such exercise of discretion shall be with the approval of the superintendent and a committee of the managers in a manner that shall be prescribed in the by-laws. Notice to remove a patient shall be in writing, signed by the superintendent and directed to the epileptic, his parents, guardian, committee or other person upon whose request the patient was received at the

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colony, at the place of residence mentioned in such request, and deposited in the post-office at Sonyea or any post-office in Livingston county with the postage prepaid.

Source.—Former State Charities L. (L. 1896, ch. 546) § 112; originally revised from L. 1894, ch. 363, § 14.

§ 113. **Discharge of patients.**—The superintendent of the colony, with the approval of the managers or of a committee thereof, shall have power to discharge patients, but no epileptic patient shall be returned to any poorhouse directly through a superintendent of the poor, or otherwise. In case a patient, not an epileptic, shall be sent to the colony, through mistaken diagnosis of his disease, or other cause, and there received, such patient shall be returned to and the traveling expenses of such return shall be paid by the person who sent him or her to the colony. Should an epileptic become insane, such patient, if a state patient, shall be sent to the state hospital of the district of which he was a resident just prior to his admission to the colony in the manner prescribed by law. The bills for the reasonable expenses incurred in the transportation of state patients to and from the state hospitals after they have been approved in writing by the state commission in lunacy, shall be paid by the treasurer of the state on the warrant of the comptroller from the funds provided for the support of the state hospitals. In case the relatives, guardians or friends of such an insane patient desire that he become an inmate of any state hospital situated beyond the limits of the district of which he was formerly a resident, and there be sufficient accommodations in such state hospital, he shall be received there in the manner provided by law for the transfer of other insane persons. Private patients, who may become insane, shall be committed, as prescribed by law, subject to the regulations of the state commission in lunacy, to such institution for the insane as may be designated by the relatives, guardians or friends of such insane person, all traveling and other expenses of removal to be paid by them. After any patient has been delivered to the managers or officers of such hospital or institution, the care and custody of the managers of the colony over such insane person shall cease; and after any patient shall, as aforesaid, be so certified to be insane, as prescribed by law, such patient shall come under the supervision of the state commission in lunacy.

Source.—Former State Charities L. (L. 1896, ch. 546) § 113; originally revised from L. 1894, ch. 363, § 15.

Insanity of patients.—The superintendent may institute proceedings to have an inmate of the Colony adjudged insane pursuant to section 80 of the Insanity Law. Rept. of Atty. Genl. (1910) 696.

§ 114. **Notice of opening of colony.**—(*Repealed by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 114; originally revised from L. 1894, ch. 363, § 17.

Consolidators' note.—In its present form this section is only temporary, as it provides for notice to be given so soon as the Craig Colony for Epileptics shall

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be ready for the reception of patients. The Colony was opened January 20, 1896, and the section, if left as it is, would be obsolete. We have, therefore, changed the words "So soon as" to "Whenever," so as to provide that notice shall be given whenever there are any vacancies in the number of patients who can be accommodated therein.

§ 114. Detention and discharge of inmates.—(*Added by L. 1911, ch. 588, and repealed by L. 1914, ch. 39, § 1.*)

§ 114. Reimbursement for maintenance expenses.—The agent appointed as provided in this article shall secure from relatives or friends who are liable therefor, or who may be willing to assume the cost of maintenance of any inmate therein, who is not maintained as a private patient, reimbursement in whole or in part of the money expended by the state for such purpose. Such agent shall perform such other duties as the board of managers may prescribe. If the board of managers believes that any inmate of such colony, not maintained therein as a private patient, has any property, or that any relative who would be liable for his support if he were not an inmate of such institution is of sufficient ability to wholly or partly provide for his maintenance therein, such board of managers may apply to a justice of the supreme court of the judicial district in which such institution is located for an order directing the application of the property of such inmate to his maintenance in such institution, or requiring the relatives so liable for his support to pay to such institution at the time specified in such order a stated amount for such maintenance. At least ten days' notice of the application for such order shall be given to such persons and in such manner as such justice shall direct, and such order shall be granted only after a hearing of parties interested who appear and desire to be heard. The relatives against whom such proceeding is instituted and who are served with the notice of the application for the order shall be deemed to be of sufficient ability, unless the contrary shall affirmatively appear to the satisfaction of such justice. If more than one relative is liable for the support of such inmate and is of sufficient ability to contribute to the expense of his maintenance in such institution, such order shall determine the portion of the expense of his maintenance to be paid by each. If the property of such inmate is not applied as directed in such order, or the relatives liable for the support of such inmate refuse or neglect to comply with such order, the board of managers of such colony may bring an action in the name of such institution to recover the amount due such institution by virtue of such order. (*Former § 115, renumbered by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 115, as added by L. 1902, ch. 356, amended by L. 1905, ch. 459.

§ 115. Sale of products.—All moneys received from time to time from the sale and disposal of manufactured products of the land, shall be paid into the treasury of the state. The comptroller shall keep a special account with and credit to the colony the sums so paid into the treasury, with annual

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interest thereon, which moneys shall be set apart for the use of the colony, and subject to the written approval of the fiscal supervisor, certified to the comptroller, may be expended by the board of managers for any purpose authorized by law connected with the colony, and drawn from the treasury in the same manner as is provided for payments under section one hundred and ten of this chapter, in such sums and at such times as required. (*Former § 116. Amended by L. 1909, ch. 149, and renumbered by L. 1910, ch. 449.*)

Source.—L. 1896, ch. 405.

§ * 117. Designation of special policemen.—The superintendent of such colony may designate officers or employees of such colony to act as special policemen, who shall have all the powers of peace officers in cases of offenses committed on the premises of such colony or within one hundred yards of such premises. The designation of such officers or employees as special policemen shall not be deemed to supersede on the premises of such colony the authority of peace officers of the jurisdiction within which such colony is located. (*Added by L. 1910, ch. 260.*)

ARTICLE IX.

NEW YORK STATE HOSPITAL FOR THE CARE OF CRIPPLED AND DEFORMED CHILDREN.

[Former article 10, thus renumbered by L. 1909, ch. 258.]

Section 130. Establishment of the New York state hospital for the care of crippled and deformed children.

- 131. Board of managers, appointment of.
- 132. Powers and duties of board of managers.
- 133. Powers and duties of the surgeon in chief.
- 134. Salaries and compensation for services. (Repealed).
- 134. Powers and duties of treasurer.
- 135. Official oath.
- 136. Who may receive treatment.
- 137. Donations.
- 138. Managers' report of receipts.

§ 130. Establishment of the New York state hospital for the care of crippled and deformed children.—The state hospital, known as the New York state hospital for the care of crippled and deformed children, established at West Haverstraw, is hereby continued for the care and treatment of any indigent children who may have resided in the state of New York for a period of not less than one year, who are crippled or deformed or are suffering from disease from which they are likely to become crippled or deformed. No patient suffering from an incurable disease shall be admitted to said hospital. Said hospital shall provide for

* So in original.

L. 1909, ch. 56. Hospital for crippled and deformed children. §§ 131, 132.

and permit the freedom of religious worship of said inmates to the extent and in the manner required in other institutions, by section twenty of the prison law. (*Thus amended by L. 1909, ch. 149, and L. 1909, ch. 240, § 72.*)

Source.—L. 1900, ch. 369, § 1.

§ 131. **Board of managers, appointment of.**—Seven citizens of this state, appointed in accordance with the provisions of section fifty-one of this chapter shall constitute the board of managers of the New York state hospital for the care of crippled and deformed children. Four members of the board shall constitute a quorum for the transaction of business. (*Amended by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 2.

§ 132. **Powers and duties of board of managers.**—The board of managers shall have the general direction and control of the property and affairs of said hospital, which are not otherwise specially provided by law, subject to the inspection, visitation and powers of the state board of charities. They may acquire and hold, in the name of and for the people of the state of New York, by grant, gift, devise or bequest, property to be applied to the maintenance of indigent children who are crippled or deformed or are suffering from disease through which they are likely to become crippled or deformed, in and for the general use of the hospital. They shall

1. Take care of the general interests of the hospital and see that its design is carried into effect according to law and its by-laws, rules and regulations.

2. Keep in a book provided for that purpose a fair and full record of their doings, which shall be open at all times to the inspection of the governor of the state, the state board of charities, the fiscal supervisor or his representatives, or any person appointed by the governor, the state board of charities or either house of the legislature to examine the same.

3. Make a detailed report to the legislature on or before the fifteenth day of January in each year, with recommendations as said managers may deem expedient, together with a statement of all moneys received by them and of the progress made in the erection of buildings for hospital purposes, if any, for the year ending on the thirtieth day of June preceeding the date of such report. (*Subd. amended by L. 1916, ch. 118.*)

4. Establish such by-laws as they may deem necessary or expedient for regulating the duties of officers, assistants and employees of the hospital and make and enforce rules and regulations for the internal government, discipline and management of the same.

5. They shall appoint a surgeon in chief who shall be a person of suitable experience in the care and treatment of disabling and deforming diseases, and may for cause at any time remove him and appoint his

§§ 133, 134. Hospital for crippled and deformed children. L. 1909, ch. 56.

successor. They shall also appoint a treasurer who shall have the custody of all moneys, obligations and securities belonging to the hospital. (*Section amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 3.

§ 133. Powers and duties of the surgeon in chief.—The surgeon in chief shall be the superintendent of the hospital. He shall appoint and may remove an assistant superintendent, steward, matron, and such assistant physicians and surgeons, assistants and attendants as may be necessary for the proper treatment of the patients under the care of the hospital, and shall have power to fill vacancies as often as they occur. The assistant superintendent shall act as the assistant to the surgeon in chief, so far as the superintendence of the hospital is concerned, to such extent as said surgeon in chief may from time to time authorize and direct. The first assistant surgeon shall be clothed with all the authority and power of the surgeon in chief during the absence or disability of the surgeon in chief. Subject to the by-laws and regulations established by the board of managers the surgeon in chief shall have the general superintendence of the property, buildings, grounds, fixtures and effects, and control of all persons therein. He shall also,

1. Provide for ascertaining daily the condition of all the patients and proper prescription for their treatment.

2. Keep a book in which he shall cause to be entered at the time of the reception of any patient, his or her name, residence and occupation, and the date of such reception, by whom brought and by what authority committed, and an abstract of all orders, warrants, requests, certificates and other papers accompanying such person. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 4, as amended by L. 1901, chs. 38, 421.

§ 134. Salaries and compensation for services.—*Repealed by L. 1910, ch. 449, § 8.*

§ 134. Powers and duties of treasurer.—The treasurer shall have the custody of all moneys, obligations and securities belonging to the hospital. He shall,

1. Open with some good and solvent bank conveniently near the hospital, to be selected with the approval of the comptroller of the state, an account in his name as such treasurer, for the deposit therein of all moneys, immediately upon receiving the same, and drawing from same only for the use of the hospital, in the manner prescribed in the by-laws, upon the written order of the steward specifying the object of the payment, approved by the surgeon in chief and subject to audit by the board of managers.

2. Keep a full and accurate account of all receipts and payments in

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the manner directed by the by-laws, and such other accounts as the managers shall prescribe.

3. Balance all accounts on his books annually on the last day of June and make a statement thereof and an abstract of the receipts and payments of the past year, and deliver the same within thirty days to the auditing committee of the managers who shall compare the same with the books and vouchers and verify the results upon further comparison with the books of the steward and certify to the correctness thereof to the managers at their next meeting. (*Subd. amended by L. 1916, ch. 115.*)

4. Render statements quarterly in each year of his receipts and payments for the three months then next preceding to such auditing committee, who shall compare, verify and certify in regard to the same in the manner provided in the last preceding subdivision, and cause the same to be recorded in one of the books of the hospital.

5. Render a further account of the state of the books, and of the state of the funds and of the property in his hands, whenever required by the managers. Execute any necessary release and satisfaction of mortgage, judgment or other lien in favor of the hospital.

6. Such treasurer shall give an undertaking to the people of the state for the faithful performance of his duties, with such sureties and in such amount as the comptroller of the state shall approve. (*Former § 135, renumbered by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 6.

References.—Purchases for hospitals, State Charities Law, § 48. Monthly statement of receipts and expenditures, Id. § 46.

§ 135. **Official oath.**—The surgeon in chief, treasurer, first assistant surgeon, assistant superintendent and steward, before entering upon their duties as such, shall take the constitutional oath of office and file the same in the office of the clerk of the county of New York. (*Former § 136, renumbered by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 7, as amended by L. 1901, ch. 38, § 2.

§ 136. **Who may receive treatment.**—No patient shall be received except upon application of a county superintendent of the poor or commissioner of charities in any county or city within the state, under rules to be established by the board of managers, showing that the patient is unable to pay for private treatment. If there was an attending physician before the patient entered the hospital, it shall be accompanied by the certificate of such physician giving previous history and condition of the patient. (*Renumbered by L. 1909, ch. 258, and as § 137 renumbered by L. 1910, ch. 449, and amended by L. 1911, ch. 172.*)

§ 137. **Donations.**—All donations made to the hospital may be received, retained and expended by the managers for the purposes for which they were given, or in such manner, if unaccompanied by condi-

§§ 138, 150-152. Hospital for treatment of tuberculosis. L. 1909, ch. 56.

tions, as the board deems advisable. (*Former § 138 renumbered by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 9.

§ 138. **Managers' report of receipts.**—The managers shall make detailed report of all moneys received by them by virtue of this article, and the progress made in the erection of any buildings that may be thereafter from time to time erected, to the legislature, in January of each year, and also to the fiscal supervisor as often and in such manner as the fiscal supervisor shall or may from time to time require. (*Former § 139 amended by L. 1909, ch. 149, and renumbered by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 369, § 10.

ARTICLE X.

NEW YORK STATE HOSPITAL FOR THE TREATMENT OF INCIPIENT PULMONARY TUBERCULOSIS.

[Former article 11, thus renumbered by L. 1909, ch. 258.]

Section 150. Establishment and objects of hospital.

151. Trustees.
152. Lands.
153. Powers and duties of trustees.
154. Annual report.
155. Donations in trust.
156. Superintendent and treasurer.
157. Duties of superintendent.
158. Duties of treasurer.
159. Medical assistants and examining physicians.
160. Free patients.
161. Private patients.
162. Support of free patients.
163. Support of private patients.

§ 150. **Establishment and objects of hospital.**—The state hospital for the treatment of incipient pulmonary tuberculosis, at Raybrook, is hereby continued.

Source.—L. 1900, ch. 416, § 1.

§ 151. **Trustees.**—Seven citizens of this state, of whom two shall be physicians, appointed in accordance with the provisions of section fifty-one of this chapter, shall constitute the board of trustees of the New York state hospital for the treatment of incipient pulmonary tuberculosis. Four members of the board of trustees shall constitute a quorum. (*Amended by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 416, § 2.

§ 152. **Lands.**—The lands to be held for the purposes herein men-

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tioned shall not be taken for any street, highway or railway without leave of the legislature.

Source.—L. 1900, ch. 416, § 3.

§ 153. Powers and duties of trustees.—For the purposes of this article the said trustees and their successors shall be a body corporate with all the powers necessary to carry into effect the purposes of this article, together with the following powers, duties and obligations. They shall,

1. Take care of the general interests of the hospital and see that its design is carried into effect, according to law, and its by-laws, rules and regulations.

2. Establish such by-laws, rules and regulations as they may deem necessary and expedient for regulating the appointment and duties of officers and employees of the hospital, and for the internal government, discipline and management of the same. .

3. Maintain an effective inspection of the affairs and management of the hospital, for which purpose the board shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws. The annual meeting of the board of trustees shall be held on the second Saturday of January.

4. Keep in a book provided for that purpose, a fair and full record of the doings of the board, which shall be open at all times to the inspection of its members, the governor of this state, and officers of the state board of charities, the fiscal supervisor or his representatives or any person appointed by the governor or either house of the legislature to examine the same.

5. Cause to be typewritten, within ten days after each meeting of such trustees or of a committee thereof, the minutes and proceedings of such meeting, and cause a copy thereof to be sent to each member of such board.

6. Enter in a book kept by them for that purpose, the date of each of their visits, and the condition of the hospital and patients, and all such trustees present shall sign the same.

7. The resident officers shall admit such trustees into every part of the hospital and its buildings, and exhibit to them on demand all the books, papers, accounts and writings belonging to the * hospitals or pertaining to its business management, discipline or government, and furnish copies, abstracts and reports whenever required by them. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—L. 1900, ch. 416, § 4.

§ 154. Annual report.—The board of trustees of the hospital shall annually, on or before the fifteenth day of January for the preceding fiscal year, report to the legislature the affairs and conditions of the hospital,

* So in original.

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with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects, as also for the erection of additional buildings. The said hospital shall be subject to the visitation and to the general powers of the state board of charities. (*Amended by L. 1909, ch. 149, and L. 1910, ch. 449.*)

Source.—L. 1900, ch. 416, § 5.

§ 155. **Donations in trust.**—The trustees may take and hold in trust for the state any grant or devise of land, or any gift or bequest of money or other personal property, or any donation, to be applied, principal or income, or both, to the maintenance and the general uses of the hospital.

Source.—L. 1900, ch. 416, § 6.

§ 156. **Superintendent and treasurer.**—The trustees shall also have power to appoint a superintendent of the hospital, who shall be a well educated physician, not a member of the board of trustees, a graduate of a legally chartered medical college, with an experience of at least six years in the actual practice of his profession, including at least one year's actual experience in a general hospital, and a treasurer, who shall give an undertaking to the people of the state for the faithful performance of his trust in such penal sum and form and with such sureties as the comptroller shall approve. Said officers may be discharged or suspended at any time by the said board of trustees in its discretion.

Source.—L. 1900, ch. 416, § 9.

§ 157. **Duties of superintendent.**—The superintendent shall,

1. Appoint such employees as are necessary and proper for the due administration of the affairs of such institution, prescribe their duties and places and, subject to the approval of the trustees, fix their compensation, in accordance with the provisions of section seventeen of the state finance law, within the appropriation fixed therefor.

2. Oversee and secure the individual treatment and personal care of each and every patient of the hospital while resident therein, and keep a proper oversight over all the inhabitants thereof.

3. Have the general superintendence of the buildings and grounds with their furniture and fixtures and the direction and control of all persons employed in and about the same.

4. Give from time to time such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy in any department for the treatment of patients.

5. Maintain salutary discipline among all employees, patients and inmates of the hospital, and enforce strict compliance with his instructions, and obedience to all the rules and regulations of the hospital. He shall, under the supervision and control of the board, discharge such

patients as are sufficiently restored to health, or such as are found to be unsuitable patients for the hospital.

6. Cause full and fair accounts and records of the conditions and prospects of the patients to be kept regularly, from day to day, in books provided for that purpose.

7. See that such accounts and records shall be fully made up to the first days of January, April, July and October, in each year, and that the principal facts and results with the report thereon be presented to the trustees at their regular meetings.

8. Conduct the official correspondence of the hospital, and keep a record or copy of all letters written, and files of all letters received.

9. Prepare and present to the board, at its annual meeting, a true and perfect inventory of all the personal property and effects belonging to the hospital, and account, when required by the board, for the careful keeping and economical use of all furniture, stores and other articles furnished for the hospital.

10. Give to superintendents of county tuberculosis hospitals courses in the diagnosis and treatment of tuberculosis and in hospital administration. The board and lodging of such superintendents of county hospitals, while actually in attendance at such courses, shall be charged as an expense of conducting such hospital. (*Section (Subds. 1-9) amended by L. 1910, ch. 449. Subd. 10 added by L. 1917, ch. 241.*)

Source.—L. 1900, ch. 416, § 10.

Liability of superintendent for defalcation of clerk.—The superintendent being personally charged with the receipt and transmission of moneys from local authorities to the state treasurer, having voluntarily delegated such duty to an agent, is responsible for the defalcation of such agent. Rept. of Atty. Genl. (1909) 861.

§ 158. Duties of treasurer.—The treasurer, among his other duties, shall,

1. Have the custody of all moneys received by, and all money, notes, mortgages and other securities and obligations belonging to the hospital.

2. Keep a full and accurate account of all receipts and payments, in the form prescribed by the by-laws, and such other accounts as shall be required of him by the trustees.

3. Balance all the accounts on his books on the first day of each July, and make a statement thereof, and an abstract of all the receipts and payments of the past fiscal year; and within five days thereafter deliver the same to the auditing committee of the trustees, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the trustees at their next meeting. (*Subd. amended by L. 1916, ch. 118.*)

4. Render a quarterly statement of his receipts and payments to such auditing committee who shall, in like manner as above, compare, verify, report and certify the result thereof to the trustees at their next meeting, who shall cause the same to be recorded in one of the books of the hospital.

5. Render a further account of the state of his books, and of the funds and other property in his custody, whenever required by the trustees.

6. Receive, for use of the hospital, money which may be paid upon obligations or securities in his hands belonging to the hospital; and all sums paid to the hospital for the support of any patient therein or for actual disbursements made in said patient's behalf for necessary clothing and traveling expenses; and money paid to the hospital from any other source.

7. Prosecute an action in the name of the hospital to recover money due or owing to the hospital, from any source; including the bringing of suit for breach of contract between private patients or their representatives and the trustees of the hospital.

8. Execute a release and satisfaction of a mortgage, judgment, lien or other debt when paid.

9. Pay the salaries of the superintendent and of all employees of the hospital, and the disbursements of the officers and members of the board as aforesaid. The treasurer shall have power to employ counsel, subject to the approval of the board of trustees.

10. Deposit all moneys received for the care of private patients and all other revenues of the hospital in a bank designated by the comptroller, and as often as the comptroller may require, transmit to the comptroller a statement showing the amount so received and deposited and from whom, and for what received, and the dates on which such deposits were made. Such statement of deposit shall be certified by the proper officer of the bank receiving such deposit or deposits. The treasurer shall make affidavit that the sum so deposited is all the money received by him from any source of income for the hospital up to the date of the latest deposit appearing on such statement. A bank designated by the comptroller to receive such deposits shall before any deposit be made, execute a bond to the people of the state in a sum and with sureties to be approved by the comptroller, for the safe keeping of such deposits. (*Section amended by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 416, § 11.

References.—Purchases for hospital, State Charities Law, § 48; monthly statement of receipts and expenditures, Id. § 46.

§ 159. **Medical assistants and examining physicians.**—All medical assistants shall be appointed by the superintendent. No medical assistant shall be appointed who is not a well educated physician and a graduate of a legally chartered medical college, and with an experience of at least two years in the actual practice of his profession, including at least one year's actual experience in a general hospital. Said trustees shall also appoint in all the cities of the state reputable physicians, citizens of the state of New York, who shall examine all persons applying for admission to said hospital for treatment. There shall be not less than two nor more

than four of such examining physicians appointed in cities of the first class, and two each in cities of the second and third class. Said examining physicians shall have been in the regular practice of their profession for at least five years, and shall be skilled in the diagnosis and treatment of pulmonary diseases. Their fee or compensation for each patient examined shall be three dollars. Not more than one-half of all the physicians to be appointed under this section shall belong to the same school of medicine or practice.

Source.—L. 1900, ch. 416, § 12.

§ 160. **Free patients.**—The trustees of said hospital to be appointed under and pursuant to the provisions of this article, and their successors, are hereby given power and authority to receive therein patients who have no ability to pay, but no person shall be admitted to the hospital who has not been a citizen of this state for at least one year, excepting that a female who has been a resident of the state for at least five years preceding the date of the application may be so admitted, though not a citizen. Every person desiring free treatment in said hospital shall apply to the health officer of his or her village, town, city or county who shall thereupon issue a written request to the superintendent of said hospital for the admission and treatment of such person, which request and statement shall be kept on file by the superintendent of the hospital. Such requests shall be filed by the superintendent in a book kept for that purpose in the order of their receipt by him. The health officer shall notify the local authorities of the town, city or county in which the person desiring free treatment resides, having charge of the relief of the poor, of every request issued to the superintendent of the said hospital in accordance with the provisions of this section. The said local authorities of the poor may make such investigation as they deem proper as to the ability of said person to pay for treatment, and if said person has already been transferred to said hospital at Raybrook the superintendent of said hospital shall co-operate and assist the said local authorities in obtaining such information. Provided, however, nothing herein contained shall be construed to delay the immediate forwarding of said person to the said hospital whenever there are facilities there for his reception. Whenever there are vacancies caused by death or removal, the said superintendent shall thereupon issue a request to an examining physician, appointed as provided for in section one hundred and fifty-nine, in the same city or county, and if there be no such examining physician in said city or county then to the nearest examining physician, for the examination by him of said patient. Upon the request of such superintendent said examining physician shall examine all persons applying for free admission and treatment in said institution, and determine whether such persons applying are suffering from incipient pulmonary tuberculosis. No person shall be admitted as a patient in said institution without the certificate of one of said examining physicians certifying that such applicant is

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suffering from incipient pulmonary tuberculosis, and if upon the reception of a person at such hospital, it is found by the authorities thereof that he is not suffering from incipient pulmonary tuberculosis, or is suffering from pulmonary tuberculosis in such an advanced stage as to prevent his deriving any benefit from care and treatment at such hospital, he shall be returned to the place of his residence, and the expense of transportation to and from the hospital shall be paid by said local authorities. Admissions to said hospital shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided by the superintendent of said hospital, in so far as such applicants are subsequently certified by the said examining physician to be suffering from incipient pulmonary tuberculosis. Every person who is declared as herein provided to be unable to pay for his or her care or treatment shall be transported to and from the hospital at the expense of said local authorities, and cared for, treated and maintained therein at the expense of the municipality which would otherwise be chargeable with the support of such poor or indigent person; and the expense of transportation, treatment, maintenance and the actual cost of articles of clothing furnished by the hospital to such poor or indigent person shall be a county, city or town charge, as the case may be. (*Amended by L. 1917, ch. 241, in effect Apr. 23, 1917.*)

Source.—L. 1900, ch. 416, § 13, as amended by L. 1902, ch. 108; L. 1906, ch. 376, and L. 1908, ch. 97.

Consolidators' note.—Words of § 13 of L. 1900, ch. 416 "When said hospital is completed and ready for the treatment of patients, or" and "thereafter" omitted, as the institution has been completed for some time.

§ 161. Private patients.—Applicants for admission to this institution who are able to pay for their care and treatment are not required to obtain a written request from the local authorities having charge of the relief of the poor, but shall apply in person to the superintendent, who shall enter the name of such applicant in the book to be kept by him, for that purpose, as provided in section one hundred and sixty; and when there is room in said hospital for the admission of such applicant, without interfering with the preference in the selection of patients, which shall always be given to the indigent, such patient shall be admitted to the hospital upon the certificate of one of the examining physicians, which certificate shall be kept on file by the said superintendent.

Source.—L. 1900, ch. 416, § 14.

§ 162. Support of free patients.—At least once in each month the superintendent of the hospital shall furnish to the comptroller and to the local authorities of each county, city or town, as the case may be, having charge of the relief of the poor, a list of all the free patients in the hospital that are accredited each respective county, city or town and who are shown by the statement of such local authorities to be unable to

pay for their care, treatment and maintenance, under the provisions of section one hundred and sixty of this chapter. He shall accompany each such list with a bill of charges for care, treatment and maintenance at a rate not exceeding five dollars per week for each such free patient, together with items of expense of transportation, fee of the examining physician and the actual cost of articles of clothing furnished by the hospital to each such free patient. The treasurer of the hospital shall thereupon collect from the said local authorities of the county, city and town such sums as may be due therefrom, and pay the same over to the state treasurer. (*Amended by L. 1910, ch. 449.*)

Source.—L. 1900, ch. 416, § 15, as amended by L. 1902, ch. 108, and L. 1906, ch. 376.

§ 163. Support of private patients.—The trustees shall have power and authority to fix the charges to be paid by patients who are able to pay for their care and treatment in said hospital or who have relatives bound by law to support them, who are able to pay therefor.

Source.—L. 1900, ch. 416, § 16.

ARTICLE XI.

INSTITUTIONS FOR JUVENILE DELINQUENTS.

[Former article 13, thus renumbered by L. 1909, ch. 258.]

- Section 180. State agricultural and industrial school at Industry; managers.
181. Managers of house of refuge for juvenile delinquents in New York city.
182. Powers and duties of managers.
183. Superintendent.
184. Commitment of children.
185. Register.
186. Disorderly children.
187. Arrest and conviction.
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189. Discharge on habeas corpus; immaterial errors.
190. Removal of children.
191. Discipline and control of inmates.
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194. Officers of ship.
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199. New York state training school for girls.
200. Appointment of managers.
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203.	Oaths and bonds.	
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212.	Freedom of worship.	
213.	Confinement of female juvenile delinquents under sentences by the courts of the United States.	
214.	Effect of article.	

§ 180. **State Agricultural and industrial School at Industry; managers.**—The State Agricultural and Industrial School, at Industry, is hereby continued for the reception of all male children, under the age of sixteen years, who shall be legally committed to such school. Such school shall be under the control and management of a board of fifteen managers appointed in accordance with the provisions of section fifty-one of this chapter. (*Amended by L. 1910, ch. 449 and L. 1915, ch. 121.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 120, as amended by L. 1898, ch. 536, and L. 1904, ch. 167; originally revised from L. 1846, ch. 143, §§ 10, 11, 13, as amended by L. 1888, ch. 404.

Consolidators' note.—L. 1902, ch. 527, provided for the selection of a new site for the state industrial school, which was at that time located at Rochester. Section 6 of that act provided that "when such lands shall have been acquired by the state, they shall be known as the state agricultural and industrial school." The officers appointed to select the lands chose a site in the town of Rush, Monroe county, and since the erection of the buildings the school has been designated by the legislature in appropriation acts as the State Agricultural and Industrial School at Industry.

Commitment of truant.—A male child under sixteen years of age may not be lawfully committed to the State Agricultural and Industrial School upon a specific charge of truancy unless he be a poor person. Rept. of Atty. Genl. (1914) 400.

§ 181. **Managers of house of refuge for juvenile delinquents in New York city.**—The society for the reformation of juvenile delinquents in the city of New York shall continue to be a corporation by the name of "The managers of the society for the reformation of juvenile delinquents in the city of New York," with all the powers conferred upon it by its act of incorporation and the acts amendatory thereof, in so far as the same are not inconsistent with the provisions of this chapter. In addition to the governor, comptroller and attorney-general, ex officio managers, there shall be twenty-one managers of such society, each of whom shall hold office for the term of three years; and the managers in office when this chapter takes effect shall continue in office for the terms for which they were chosen respectively. The members of such society residing in the city of New York shall annually on the third Monday in November, by a plurality

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of votes, elect seven managers of such society. If a vacancy shall occur in the office of any manager, the board of managers may appoint a person to fill the vacancy for the remainder of the unexpired term.

Source.—Former State Charities L. (L. 1896, ch. 546) § 121, as amended by L. 1904, ch. 167, and L. 1905, ch. 613; originally revised from L. 1824, ch. 126, §§ 1, 3; L. 1865, ch. 172; L. 1878, ch. 384.

Reference.—See also heading "Juvenile Delinquents," for other provisions relating to the Society for the Reformation of Juvenile Delinquents.

§ 182. **Powers and duties of managers.**—The managers of such house of refuge, established by the society for the reformation of juvenile delinquents, in the city of New York, and of such state agricultural and industrial school, at Industry, shall have the general control of such institutions and shall make all such rules, regulations, ordinances and by-laws for the government, discipline, employment, management and disposition of the officers thereof, and of the children while in such institution or in the care of such managers, as to them may appear just and proper. They shall appoint a superintendent and such other officers as they may deem necessary for the conduct and welfare of the institution under their charge. They shall report in detail annually to the legislature, on or before the fifteenth day of January, the number of children received by them into the institution, the disposition thereof, their receipts and expenditures, their proceedings during the preceding year, and all other matters which they deem advisable to be brought to the attention of the legislature. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 122; originally revised from L. 1846, ch. 143, §§ 11, 12, 13; L. 1824, ch. 126, § 6.

As to control and discipline of children committed, the institution stands in loco parentis. People ex rel. Zeese v. Masten (1894), 79 Hun 580, 29 N. Y. Supp. 891.

Contracts for re-employment. Rept. of Atty. Genl. (1902) 221.

§ 183. **Superintendent.**—The superintendent so appointed shall be the chief executive officer of such school, or house of refuge, and subject to the by-laws, rules and regulations thereof and the powers of the board of managers, shall have control of the internal affairs and shall maintain discipline therein and enforce a compliance with, and obedience to, all rules, by-laws, regulations and ordinances adopted by such board for the government, discipline and management of such school or house of refuge. Under direction of such managers, he shall receive and take into such institution all children legally committed thereto by any court having authority to make such commitment.

Source.—Former State Charities L. (L. 1896, ch. 546) § 123; originally revised from L. 1846, ch. 143, § 13.

§ 184. **Commitment of children.**—Male children under the age of sixteen years may be committed from the rural counties of this state to the state agricultural and industrial school, at Industry, or the house of refuge established by the society for the reformation of juvenile delin-

quents; but such children in the counties of New York and Kings shall be committed to the house of refuge in New York city, established by such society. The courts shall ascertain by such proof as may be in their power, the age of every delinquent committed to either of such institutions, and insert such age in the order of commitment, and the age thus ascertained shall be deemed and taken to be the true age of such delinquent. If the court shall omit to insert in the order of commitment the age of any delinquent committed to such school or house of refuge, the managers shall, as soon as may be after such delinquent shall be received by them, ascertain his age by the best means in their power, and cause the same to be entered in a book to be designated by them for that purpose, and the age of such delinquent thus ascertained shall be deemed and taken to be the true age of such delinquent. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 124, as amended by L. 1904, ch. 167; originally revised from L. 1846, ch. 143, § 13; L. 1850, ch. 24; L. 1852, ch. 387, §§ 2, 3; L. 1865, ch. 172, §§ 3, 4; L. 1891, ch. 216.

References.—Commitment of juvenile delinquents to House of Refuge of Society for Reformation of Juvenile Delinquents, see L. 1824, ch. 126, § 4, and L. 1826, ch. 24, § 1, under heading Juvenile Delinquents, Vol. IV, ante. Commitment of children to reformatory institutions, Penal Law, §§ 486, 2184, 2194.

Commitment of juvenile delinquents.—All commitments from the first, second or third judicial districts of the persons mentioned in section 2184 of the Penal Law should be to the House of Refuge established by the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York and the commitment in other districts should be to the State Industrial School at Rochester. Rept. of Atty. Genl. (1907) 569.

A parole board should be guided by the age of children as stated in the commitment papers. Rept. of Atty. Genl. (1909) 866.

Loco parentis.—As to control and discipline of child under 16, committed to a reformatory or other institution, the institution, "until his majority or for a shorter time," stands in *loco parentis* where the commitment is lawful. The loss by parent of custody and earnings of child follows as one of the incidents for which there is no remedy. *People ex rel. Zeese v. Masten* (1894), 79 Hun 580, 29 N. Y. Supp. 891.

Notice to parents.—To authorize commitment under §§ 486, 487 of the Penal law, the parent, guardian or custodian of the child must have notice of or appear at the examination. *People ex rel. James v. New York Soc. for Prevention of Cruelty to Children* (1897), 19 Misc. 156, 44 N. Y. Supp. 1098. And where a commitment fails to show that notice was given to parents or that parents were present at examination of child, there was no jurisdiction to commit. *People ex rel. Cronin v. Carpenter* (1898), 25 Misc. 341, 55 N. Y. Supp. 521.

A commitment under § 486, Penal Law, which does not state that the father of the child was present or notified, will not authorize detention of child, although mother was present at the hearing. *People ex rel. Brown v. Carpenter* (1890), 57 Hun 588, 11 N. Y. Supp. 852, mod. (1890), 123 N. Y. 640, 25 N. E. 1044.

Proceeding not criminal.—A proceeding for the commitment of a destitute child to a charitable institution under §§ 486, 487 of the Penal Law, is not a criminal proceeding. *Matter of Knowack* (1899), 158 N. Y. 482, 53 N. E. 676, 44 L. R. A. 699, affg. (1898), 29 App. Div. 627, 52 N. Y. Supp. 1144.

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Length of imprisonment.—Commitment need not specify period of imprisonment; law fixes the time. *People ex rel. Society, etc. v. Degnen* (1869), 54 Barb. 105.

Restoration to parent.—Where a destitute child of intemperate parents has been committed to a charitable institution and the parents have reformed, the child may be restored to the parents during its minority upon their petition and without consent of the institution. *Matter of Knowack* (1899), 158 N. Y. 482, 53 N. E. 676, 44 L. R. A. 699, affg. (1898), 29 App. Div. 627, 52 N. Y. Supp. 1144.

Section cited.—*People ex rel. Long v. Supervisors of Westchester* (1909), 65 Misc. 227, 119 N. Y. Supp. 695.

§ 185. **Register.**—Upon the commitment of a delinquent to such agricultural and industrial school or house of refuge, the superintendent thereof shall cause to be entered in the register kept for that purpose, the date of admission, name, age, place of birth, nationality, residence and such other facts as may be ascertained, relating to the origin, condition, peculiarity or inherited tendencies of such delinquent.

Source.—Former State Charities L. (L. 1896, ch. 546) § 125.

§ 186. **Disorderly children.**—All male children under the age of sixteen in the several counties which now are or hereafter shall be designated by law as the counties from which juvenile delinquents shall be sent to the house of refuge in the city of New York, deserting their homes without good and sufficient cause, or keeping company with dissolute or vicious persons against the lawful commands of their fathers, mothers, guardians or other persons standing in the place of a parent, shall be deemed disorderly children.

Source.—L. 1865, ch. 172, § 5.

§ 187. **Arrest and conviction.**—Upon complaint made on oath to any police magistrate or justice of the peace against any child within his county, under the age of sixteen, by his parent or guardian, or other person standing to him in place of a parent, as being disorderly, such magistrate or justice shall issue his warrant for the apprehension of the offender, and cause him to be brought before himself or any other police magistrate or justice of the said county for examination.

Source.—L. 1865, ch. 172, § 6.

Consolidators' note.—Words "or her" in the former law omitted, as by L. 1904, ch. 167, the institution in question can only take commitments of males.

§ 188. **Commitment of disorderly children.**—If such magistrate or justice be satisfied by competent testimony that such person is a disorderly child within the description aforesaid, he shall make up and sign a record of conviction thereof, and shall by warrant under his hand commit such person to the house of refuge established by the managers of the society for the reformation of juvenile delinquents in the city of New York, and the powers and duties of the said managers in relation to the said children shall be the same in all things as are prescribed as to other juvenile delinquents received by them; provided, however, that any person com-

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mitted under this section shall have the same right of appeal now secured by law to persons convicted of criminal offense; but on any such appeal mere informality in the issuing of any warrant shall not be held to be sufficient cause for granting a discharge.

Source.—L. 1865, ch. 172, § 7.

§ 189. **Discharge on habeas corpus; immaterial errors.**—No person convicted of vagrancy or of any criminal offense, and committed to or confined in the house of refuge established by the said society in the city of New York, shall be discharged by habeas corpus or certiorari from such confinement, on the ground that no certificate of such conviction has been filed, or on the ground of any variance, misdescription, misnomer or any defects or imperfections in matter of form contained in the record, process, entries, judgment, order of commitment, returns or other proceedings under or in pursuance of which such commitment was made; provided that such certificate be filed or such variance, misdescription, misnomer or defect, or imperfection in matter of form be corrected by order of the court before which such writ of habeas corpus or certiorari is returnable.

Source.—L. 1873, ch. 359, § 4.

§ 190. **Removal of children.**—If any child now in the house of refuge, or who may hereafter be committed to it, is a cripple, or is deaf, blind, epileptic or imbecile, or becomes so while an inmate of the house of refuge, or if the health of any such child is or shall become impaired so that, in the judgment of the managers, such child is an improper subject for retention in the house of refuge, the managers may, in their discretion, notify the parent or guardian of the condition of such child and request the parent or guardian to remove such child from the institution. If the parent or guardian so notified fails to remove such child within fifteen days after the notice is given, or if there should be no such parent or guardian known to the managers, then the superintendent of the poor of the county whence such child was committed shall, on a written request of the managers, remove such child without delay, at the expense of the said county.

Source.—L. 1860, ch. 241, § 1, as amended by L. 1878, ch. 384, § 1.

§ 191. **Discipline and control of inmates.**—The managers of the state agricultural and industrial school, at Industry, shall receive and detain, during minority, every male delinquent committed thereto in pursuance of law. The managers of the house of refuge for juvenile delinquents in the city of New York may receive and detain during minority all male delinquents committed thereto. No female shall be committed to or received at either the said state agricultural and industrial school or the house of refuge for juvenile delinquents in the city of New York. The managers of each institution shall cause the children detained therein

or under their care to be instructed in such branches of useful knowledge, and to be regularly and systematically employed in such lines of industry as shall be suitable to their years and capacities, and shall cause such children to be subjected to such discipline as, in the opinion of such board, is most likely to effect their reformation. The managers of each institution, with the consent of any child committed thereto, may bind out as an apprentice or servant, such child during the time they would be entitled to retain him to such persons and at such places to learn such trade and employment as in their judgment will be for the future benefit and advantage of such child. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 126, as amended by L. 1904, ch. 167; originally revised from L. 1824, ch. 126, §§ 4, 5, as amended by L. 1866, ch. 172; L. 1846, ch. 143, § 13; L. 1875, ch. 228, § 7; L. 1886, ch. 539, § 3, as amended by L. 1893, ch. 470.

References.—Placing out children regulated, State Charities Law, §§ 300-308.

Discipline.—Managers of charitable institutions may subject a child committed thereto, to such discipline and control as a parent may lawfully exercise over a minor. *People ex rel. Zeese v. Masten* (1894), 79 Hun 580, 29 N. Y. Supp. 891.

§ 192. **Military drill.**—The superintendent of the state agricultural and industrial school, and the superintendent of the house of refuge, established by the society for the reformation of juvenile delinquents, with the approval of the respective boards of managers thereof, may institute and establish a system of rules and regulations for uniforming, equipping, officering, disciplining and drilling in military art, the inmates of such institutions, and for the exercise and drill of such inmates according to the most approved tactics, such number of hours daily as such superintendent may deem advisable.

Source.—Former State Charities L. (L. 1896, ch. 546) § 127, as amended by L. 1904, ch. 167; originally revised from L. 1886, ch. 539, § 4.

§ 193. **School ship.**—The managers of the society for the reformation of juvenile delinquents are hereby authorized to establish a school ship for the purpose of instructing the boys in their charge in navigation and the duties of seamanship, and for that purpose they are authorized to purchase and hold any vessel or vessels, and to navigate the same into and upon any of the ports and waters of the state.

Source.—L. 1869, ch. 285, § 1.

§ 194. **Officers of ship.**—The said society may employ such superintendents and officers for the government and instruction of the boys, and from time to time make such rules and regulations for the government of the school ship, as they may deem expedient.

Source.—L. 1869, ch. 285, § 2.

§ 195. **Transfer to ship.**—The said society shall have the control of the school ship and other vessels procured for the institution, and may transfer from the house of refuge on board of said ship or vessels such

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boys under their charge as they may elect, and shall cause them to be instructed in navigation and the duties of seamanship, and may send any boy upon a voyage at sea, and in his behalf enter into necessary contract therefor, with his assent or the assent of his parent or guardian if it is practicable to obtain the same.

Source.—L. 1869, ch. 285, § 3.

§ 196. **Effects of alcoholic drinks and narcotics to be taught.**—The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in the schools connected with such house of refuge established by the society for the reformation of juvenile delinquents in the city of New York and in the state agricultural and industrial school at Industry, for not less than four lessons a week for ten or more weeks in each year. All pupils who can read shall study this subject from suitable text-books, but pupils unable to read shall be instructed in it orally by teachers using text-books adapted for such oral instruction as a guide and standard, and these text-books shall be graded to the capacities of the pupils pursuing such course of study.

Source.—Former State Charities L. (L. 1896, ch. 546) § 130.

Reference.—Effect of alcoholic drinks and narcotics to be taught in public schools, Education Law, § 760.

§ 197. **Transfer of inmates to penitentiary or Elmira reformatory.**—If a delinquent confined in the state agricultural and industrial school or the house of refuge established by the society for the reformation of juvenile delinquents, by commitment for felony, is guilty of attempting to set fire to any building belonging to either of such institutions, or to any combustible matter for the purpose of setting fire to any such building, or of openly resisting the lawful authority of an officer thereof, or of attempting to excite others to do so, or shall by gross or habitual misconduct exert a dangerous and pernicious influence over the other delinquents, the board of managers of the institution wherein such case arises shall submit a written statement of the facts to a justice of the supreme court, or, if the case arises within the state agricultural and industrial school, to the county judge of the county of Monroe, and apply to him for an order authorizing a temporary confinement of such delinquent in the Monroe county penitentiary, or if over sixteen years of age, in the Elmira reformatory; and if the case arises within the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, in the county jail or penitentiary of the county of New York, or if the delinquent be over sixteen years of age, to the Eastern New York reformatory. Such judge shall forthwith inquire into the facts, and if it appear that the statement is substantially true, and that the ends desired to be accomplished by the institution wherein the case has arisen will be best promoted thereby, he shall make an order authorizing the confinement of such delinquent in such penitentiary, county jail or

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reformatory for the limited time expressed in the order, and the keeper or superintendent of such penitentiary, county jail or reformatory shall receive such delinquent and detain him during the time expressed in such order. At the expiration of the time limited by such order, or sooner, if the board of managers of either of such institutions shall direct, the superintendent or keeper of such reformatory, county jail or penitentiary shall return such delinquent to the custody of the superintendent of the institution from which such delinquents shall have been received.

Source.—Former State Charities L. (L. 1896, ch. 546) § 128, as amended by L. 1904, ch. 167; originally revised from L. 1861, ch. 506, as amended by L. 1891, ch. 375.

Consolidators' note.—Words "when completed and until then to the Elmira Reformatory," contained in § 128 of the former law, omitted as obsolete, the institution in question having been for some time completed.

References.—Provisions relating to the management of Elmira and Eastern New York Reformatories. Prison Law, §§ 280-308.

Section is unconstitutional in so far as it fails to provide due process of law. Rept. of Atty. Genl. (1903), 448.

§ 198. Confinement of juvenile delinquents under sentences by the courts of the United States.—The superintendents of the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, and the state agricultural and industrial school at Industry, shall receive and safely keep in their respective institutions, subject to the regulations and discipline thereof, and the provisions of this article, any male criminal under the age of sixteen years convicted of any offense against the United States, under sentences of imprisonment in any court of the United States, sitting within this state, until such sentences be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence.

Source.—Former State Charities L. (L. 1896, ch. 546) § 129, as amended by L. 1904, ch. 167; originally revised from L. 1853, ch. 608, § 1.

§ 199. New York state training school for girls.—The New York state training school for girls, is hereby continued for the reception of all girls not over the age of sixteen years, who shall be legally committed thereto or placed in charge of such institution. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 131, as added by L. 1904, ch. 453.

§ 200. Appointment of managers.—Such institution shall be under the control of a board of seven managers, of whom one shall be a physician who has practiced his profession for ten years and at least two shall be women, all to be appointed in accordance with the provisions of section fifty-one of this chapter. (*Amended by L. 1910, ch. 449 and L. 1911, ch. 447.*)

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L. 1909, ch. 56.

Source.—Former State Charities L. (L. 1896, ch. 546) § 132-a, as added by L. 1904, ch. 453.

§ 201. General powers and duties of managers.—The board of managers shall have the general superintendence, management and control of the institution over which it is appointed; of the grounds and buildings; officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof, and may make such rules and regulations as may seem to it necessary for carrying out the purposes of such institution. The board of managers of such institution shall appoint from among its members a president, secretary and treasurer, who shall hold office for such length of time as such board may determine, and a female superintendent, who shall hold office during the pleasure of the board. The board of managers shall fix the compensation of the officers and employees of the institution, subject to the provisions of section seventeen of the state finance law. The managers of such institution shall cause the females detained therein or under their care to be instructed in such branches of useful knowledge, and to be regularly and systematically employed in such lines of industry as shall be suitable to their years and capacities, and shall cause such females to be subjected to such discipline as, in the opinion of such board, is most likely to effect their reformation. The managers of such institution, with the consent of any female committed thereto, may bind out as an apprentice or servant such female during the time they would be entitled to retain her, to such persons and at such places to learn such trade and employment as in their judgment will be for the future benefit and advantage of such female. Any female who, while upon parole or bound out as provided for in this section, shall require immediate medical aid and attention in a case of actual emergency and which cannot be deferred without danger to such female, shall receive the necessary aid as the circumstances of the case may demand, and all expenses necessarily incurred through such medical aid and attention shall be paid by the treasurer of the board of managers. (*Amended by L. 1910, ch. 449 and L. 1915, ch. 388.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 132, as added by L. 1904, ch. 453.

Letters; communication of inmate with mother.—The board of managers of the New York State Training School for Girls is vested with discretion to prevent an inmate from communicating with persons outside the institution. Rept. of Atty. Genl. (1914) 54.

§ 202. General powers of superintendent.—The superintendent of such institution shall, subject to the direction and control of the board of managers thereof:

1. Have the general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees and the

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inmates thereof, and of all matters related to their government and discipline.

2. Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of managers, as may seem to her proper or necessary for the government of such institution and its officers and employees; and for the employment, discipline and education of the inmates thereof.

3. Exercise such other powers and perform such other duties as the board of managers shall prescribe.

Such superintendent shall also have power to appoint and remove all subordinate female officers and employees, subject to the approval of the board. Under the direction of such managers, she shall receive and take into such institution all females legally committed thereto by any court or magistrate having authority to make such commitment.

Source.—Former State Charities L. (L. 1896, ch. 546) § 134, as added by L. 1904, ch. 453.

Providing accommodations for inmates.—Commitment by the court of pupils and inmates to the New York Training School for Girls should not be disregarded by the Board of Managers on the ground that proper accommodations cannot be had. The Board of Managers should confer with the State Board of Charities regarding such matters. Rept. of Atty. Genl. (1910) 947.

§ 203. Oaths and bonds.—Each manager and superintendent of such institution shall take the constitutional oath of office and the superintendent shall execute a bond to the people of this state in the sum of five thousand dollars with sureties approved by the state comptroller, which shall be filed in the office of the comptroller. The manager appointed as treasurer of such institution shall give a bond in such amount as the comptroller may direct. The comptroller may require other officers of such institution to give a bond if in his opinion the interests of the state demand it.

Source.—Former State Charities L. (L. 1896, ch. 546) § 134, as added by L. 1904, ch. 453.

Reference.—Constitutional oath of office prescribed, Constitution Art. 13, § 1.

§ 204. Commitments; papers furnished by committing magistrates.—1. Whenever any female not over the age of sixteen years shall be brought before any court or committing magistrate, and it shall appear to the satisfaction of such court or magistrate by the confession of such female, or by competent testimony, that such female frequents reputed houses of prostitution or assignation, or frequents the company of thieves or prostitutes, or is found associating with vicious and dissolute persons or is willfully disobedient to parent or guardian, and is in danger of becoming morally depraved; or is of intemperate habits, or is vagrant or is guilty of any criminal offense, and who is not insane, nor mentally or physically incapable of being substantially benefited by the training and discipline of such institution, she may be sentenced and committed to the New York

State Training School for Girls, or placed in charge of the board of managers thereof, to be there confined under the provisions of law relating to such institution, but no person under the age of twelve years shall be committed to such institution for any crime or offense less than a felony, and no commitment made under this section which shall recite the facts upon which it is based, shall be deemed or held to be invalid by reason of any imperfection or defect in form. No person shall be committed to such institution nor placed in the charge of the board of managers thereof for a definite term, but any such person may be paroled or discharged at any time after her commitment, by the board of managers of such institution. Any such female under the age of fifteen years when so committed or placed in charge of the board of managers of said school, shall not be retained therein for a longer period than until she becomes of the age of eighteen; and such females, fifteen years of age or over, when so committed, shall not be detained for a period longer than three years from the time of such commitment. Every such female shall continue to be a ward of such institution until she becomes of the age of twenty-one years, notwithstanding her parole or discharge therefrom, and it shall be the duty of said board of managers to continue to exercise over her such control as may be necessary for her welfare during her said minority as a ward of said institution; and if deemed by said board of managers necessary for her welfare or for her protection of evil associations or companionship, said board may return her temporarily to said institution at any time during her said minority. If any such female shall marry during her said minority such wardship shall thereupon terminate. (*Subd. amended by L. 1909, ch. 340, L. 1910, ch. 449 and L. 1911, ch. 486.*)

2. The board of managers of such institution shall furnish the several county clerks of the state with suitable blanks for the commitment of females thereto. Such county clerks shall immediately notify the magistrates of their respective counties of the reception of such blanks and that upon application they will be furnished to them.

3. The magistrate committing a female, pursuant to this section, shall immediately notify the superintendent of the institution to which the commitment is made of the conviction of such female, and shall cause a record to be kept of the name, age, birth-place, occupation, previous commitments, if any, and for what offenses; the last place of residence of such female, and the particulars of the offense for which she is committed. The magistrate shall also execute a warrant of commitment, which shall recite the facts upon which it is based, and the name, age, birth-place, occupation, previous commitments, if any, and for what offenses, and the last place of residence of such female. This warrant of commitment shall be delivered to a person authorized by law to accompany such female to the institution, and shall be delivered by such person to the superintendent of such institution, who shall cause the fact stated therein, and such other

facts as may be directed by the board of managers, to be entered in a book of record. This warrant of commitment shall constitute the only paper requisite to a commitment to this institution.

4. Such magistrate shall, before committing any such female, inquire into and determine the age of such female at the time of commitment, and her age as so determined shall be stated in the warrant. The statement of the age of such female in such warrant shall be conclusive evidence as to such age, in any action to recover damages for her detention or imprisonment under such warrant, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment. If the court or magistrate shall omit to insert in the warrant of commitment the age of any delinquent committed to such school, the managers shall as soon as may be after such delinquent shall be received by them, ascertain her age by the best means in their power, and cause the same to be entered in a book to be designated by them for that purpose, and the age of such delinquent thus ascertained shall be deemed and taken to be the true age of such delinquent. (*Amended by L. 1909, ch. 340, L. 1910, ch. 449, and L. 1911, ch. 486.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 135, as added by L. 1904, ch. 453, amended by L. 1906, ch. 225.

§ 205. **Return of females improperly committed.**—Whenever it shall appear to the satisfaction of the board of managers of such institution, that any person committed thereto is not of proper age to be so committed or is not properly committed, or is insane or mentally incapable of being materially benefited by the discipline of such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned in the custody of one of the persons employed by such board of managers to convey to such institution females committed thereto, who shall deliver her into the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be by such magistrate resentenced for the offense for which she was committed to such institution and dealt with in all respects as though she had not been so committed. The cost and expenses of the return of such female, necessarily incurred and paid by such board of managers, shall be a charge against the county from which such female was committed, to be paid by such county to such board of managers in the same manner as other county charges are collected.

Source.—Former State Charities L. (L. 1896, ch. 546) § 136, as added by L. 1904, ch. 453.

Expense charge upon county.—Expenses incurred by the board of managers of the New York Training School for girls at Hudson for the return of females improperly committed to said institution from the counties of New York and Kings,

are a charge upon said counties and the bills therefor should be presented to the comptroller of the city of New York. Rept. of Atty. Genl. (1910) 939.

The expenses necessarily paid by the Board of Managers of the New York Training School for Girls in causing the return of females committed to the school, who were incapable of being morally benefited by its discipline, are a proper charge against the county from which those females were committed, and should be paid by said county to the Board of Managers in the same manner as other county charges. Where the Board of Supervisors disallow the claim presented for such expenses, the proper procedure on the part of the Board of Managers is to apply for a writ of certiorari to review the determination of the Board of Supervisors, and the Board of Managers of the school may request the Attorney-General to furnish the legal assistance required in the matter. Rept. of Atty. Genl. (1912) 59.

Expenses of marshal.—Where a marshal goes for a girl and finds that her commitment has been revoked, his expenses need not be paid by the board of supervisors of the county. Rept. of Atty. Genl. (1911) 270.

§ 206. **Disposition of children of females so committed and of the mothers of such children.**—If any female committed to such institution, at the time of such commitment, is a mother of a nursing child in her care under one year of age, or is pregnant with child which shall be born after such commitment, such child may accompany its mother to and remain in such institution until it is two years of age and must then be removed therefrom. The board of managers of such institution may cause such child to be placed in any asylum for children in this state, or may place such child under the care and custody of a proper person willing to assume such care, and pay for the care and maintenance of such child at a reasonable rate, until the mother of such child shall have been discharged from the institution, and may make such change from time to time in the care and custody of such child as the board may deem advisable. If such female, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the magistrate committing such female shall cause such child to be committed to such asylum as may be provided by the law for such purposes, or to the care and custody of some relative or proper person willing to assume such care. If a female, when committed, is pregnant with child, the board of managers may, at any time after commitment, place such female in any maternity hospital, or with any proper person or family in this state, and pay at a reasonable rate for the care and maintenance of such female and such child, if any, until such child becomes two years of age, when the mother must be returned to such institution and the child disposed of as hereinabove provided in the case of a child who remains in the institution until it is two years of age. If a female, when committed, is the mother of a nursing child in her care under one year of age, the board of managers may also cause such mother and child to be placed in the care and custody of a proper person willing to assume such care, and pay therefor a reasonable rate for maintenance and care until the child becomes two

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years of age, when the mother must be returned to such institution and the child disposed of as hereinabove provided, in the case of a child who remains in the institution until it is two years of age. Said board shall cause the return to the institution of said mother, in either case hereinbefore provided for, before the child becomes two years of age, whenever, in the opinion of said board, the best interests of said mother and child will justify the separation. (*Amended by L. 1911, ch. 555 and L. 1915, ch. 158.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 137, as added by L. 1904, ch. 453, amended by L. 1908, ch. 240.

§ 207. Children may be bound out.—The board of managers may bind out any child, born at or brought by its mother to the house of refuge, if a male, for a period which shall not be beyond his twenty-first year, and if a female, for a period which shall not be beyond her eighteenth year, which shall have been abandoned by its mother for a period not less than six months, and remaining in the house of refuge, to be a clerk, apprentice or servant, by an indenture in writing, which shall be signed by all the managers in the name of the board of managers, and shall be signed also by the person or persons to whom such child shall be so bound out, who shall, in such indenture, undertake to treat such child kindly, which binding shall be as effectual as if such child had bound himself or herself with the consent of his or her father or mother.

Source.—L. 1881, ch. 187, § 10, as amended by L. 1887, ch. 17; L. 1892, ch. 704, and L. 1896, ch. 587.

§ 208. Conveyance of females committed.—The board of managers of such institution shall employ suitable female persons, to be known as marshals, to convey from the place of conviction to such institution all females legally committed thereto, and such marshals shall have the power and authority of deputy sheriffs in respect thereto. All expenses necessarily incurred in making such conveyance shall be paid by the treasurer of the board of managers.

Source.—Former State Charities L. (L. 1896, ch. 546) § 138, as added by L. 1904, ch. 453.

§ 209. Detentions and rearrests in cases of escape.—The board of managers of such institution may detain therein, under the rules and regulation adopted by them, any female legally committed thereto, according to the terms of the sentence and commitment, and conditionally discharge such female at any time prior to the expiration of the term of commitment. If an inmate escape or be conditionally discharged from such institution, the board of managers may cause her to be rearrested and returned to such institution, to be detained therein for the unexpired portion of her term, dating from the time of her escape or conditional discharge. A person employed by the board of managers of such institution to convey

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to such institution females committed thereto, may arrest, without a warrant, an escaped inmate in any county in this state, and shall forthwith convey her to the institution from which she escaped; and a magistrate may cause an escaped inmate to be arrested and held in custody, until she can be removed to such institution, as in the case of her first commitment thereto. A person conditionally discharged from such institution may be arrested and returned thereto, upon a warrant issued by its president and secretary. Such warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to a person employed by such board of managers to convey to such institution females committed thereto, and may be executed by such person in any county of this state.

Source.—Former State Charities L. (L. 1896, ch. 546) § 139, as added by L. 1904, ch. 453.

§ 210. **Employment of inmates.**—The board of managers of such institution shall determine the kind of employment for females committed thereto and shall provide for their necessary custody and superintendence. The provisions for the safe keeping and employment of such females shall be made for the purpose of teaching such females a useful trade or profession and improving their mental and moral condition. Such board of managers may credit such females with a reasonable compensation for the labor performed by them, and may charge them with the necessary expenses of their maintenance and discipline, not exceeding the sum of two dollars per week. If any balance shall be found to be due such females at the expiration of their terms of commitment such balance may be paid to them at the time of their discharge. To secure the safe keeping, obedience and good order of the females committed to such institution, the superintendent thereof has the same powers as to such females as keepers of jails and penitentiaries possess as to persons committed to their custody.

Source.—Former State Charities L. (L. 1896, ch. 546) § 139-a, as added by L. 1904, ch. 453.

§ 211. **Clothing and money to be furnished discharged inmates.**—The board of managers of such institution may, in their discretion, furnish to each inmate of such institution who shall be discharged therefrom, necessary clothing not exceeding twelve dollars in value, or if discharged between the first day of November and the first day of April to the value of not exceeding eighteen dollars, and ten dollars in money, and a ticket for the transportation of one person from such institution to the place of conviction of such inmate, or to such other place as such inmate may designate, at no greater distance from such institution than the place of conviction.

Source.—Former State Charities L. (L. 1896, ch. 546) § 139-b, as added by L. 1904, ch. 453.

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§ 212. **Freedom of worship.**—Nothing herein contained shall interfere with the right of freedom of worship of any inmate confined within said institution, as provided by the constitution of the state of New York.

Source.—L. 1887, ch. 17, § 3.

§ 213. **Confinement of female juvenile delinquents under sentences by the courts of the United States.**—The superintendent of the New York state training schools for girls, at Hudson, shall receive and safely keep in such institution, subject to the regulations and discipline thereof, and the provisions of this article, any female not over the age of sixteen years convicted of any offense against the United States, and sentenced to imprisonment by any court of the United States, sitting within this state, until such sentences be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 139-c, as added by L. 1904, ch. 453.

§ 214. **Effect of article.**—Nothing in this article contained shall affect any of the provisions of the state finance law or article four of this chapter and the laws amendatory thereof. (*Thus amended by L. 1909, ch. 240, § 73.*)

Source.—L. 1904, ch. 453, § 3.

ARTICLE XII.

HOUSE OF REFUGE AND REFORMATORY FOR WOMEN.

[Former article 14, thus renumbered by L. 1909, ch. 258.]

- Section 220. Names and locations of house of refuge and reformatory for women.
221. Appointment of managers.
222. General powers and duties of managers.
223. Appointment and removal of officers and employees; compensation.
224. General powers of superintendents.
225. Oaths and bonds.
226. Commitments; papers furnished by committing magistrate.
227. Return of females improperly committed.
228. Transfers to other institutions.
229. Disposition of children of women so committed.
230. Conveyance of women committed.
231. Detentions and rearrests in case of escapes.
232. Employment of inmates.
233. Clothing and money to be furnished discharged inmates.

§ 220. **Names and locations of house of refuge and reformatory for women.**—The house of correction for women located at Albion is continued and shall be known as the western house of refuge for women.

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The reformatory for women located at Bedford is also continued and shall be known as the New York state reformatory for women. (*Amended by L. 1909, ch. 258, and L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 140, as amended by L. 1904, ch. 453; originally revised from L. 1881, ch. 187, as amended by L. 1892, ch. 704; L. 1890, ch. 238, § 1; L. 1892, ch. 637, § 1.

Constitutionality.—Chapter 187 of Laws of 1881, establishing a house of refuge for women at Hudson, is not open to objection that it prevents the governor from exercising his constitutional power to pardon, as to persons committed under it, nor is it repugnant to the Federal Constitution in providing for women between the ages of 15 and 30, a punishment different in place and period from that prescribed by law for persons of different age. *People ex rel. Duntz v. Coon* (1893), 67 Hun 523, 22 N. Y. Supp. 865.

§ 221. **Appointment of managers.**—Each such institution shall be under the control of a board of seven managers, of whom two shall be women and one a physician who has practiced his profession for ten years, appointed in accordance with the provisions of section fifty-one of this chapter. (*Amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 141; originally revised from L. 1881, ch. 187, § 2, as amended by L. 1895, ch. 253; L. 1890, ch. 238, § 2; L. 1892, ch. 637, § 2.

§ 222. **General powers and duties of managers.**—Each board of managers shall have the general superintendence, management and control of the institution over which it is appointed; of the grounds and buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof, and may make such rules and regulations as may seem to them necessary for carrying out the purposes of such institutions. Each board of managers shall constitute a board of parole of the institution over which it is appointed, and shall have power to parole and discharge inmates as hereinafter provided. In the consideration of the parole or discharge of any inmate of the New York state reformatory for women at Bedford, the judge or magistrate who committed any female to such institution, when he so requests in writing, shall constitute a member of such board of parole in considering and determining the matter of the parole or discharge of such female committed by him.

Source.—Former State Charities L. (L. 1896, ch. 546) § 142, as amended by L. 1904, ch. 165.

Committing magistrate member of parol board.—A judge or magistrate who has committed a female to the State Reformatory for Women at Bedford, when he so requests in writing, shall become a member of the Board in considering or determining the manner of parol or discharge of any women committed by him. *Atty. Genl. Opin.* (1915), 4 State Dep. Rep. 511.

§ 223. **Appointment and removal of officers and employees; compensation.**—The board of managers of each of such institutions shall appoint from among its members a president, secretary and treasurer, who shall

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hold office for such length of time as such board may determine. They shall appoint a female superintendent, who shall hold office during the pleasure of the board. Such boards of managers shall fix the compensation of the officers and employees of the institution under their charge in the manner provided in section seventeen of the state finance law. (*Thus amended by L. 1909, ch. 149, in effect April 5, 1909.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 143; originally revised from L. 1881, ch. 187, § 6, as amended by L. 1892, ch. 704; L. 1890, ch. 238, § 6; L. 1892, ch. 637, § 6.

§ 224. **General powers of superintendents.**—The superintendent of each such institution shall, subject to the direction and control of the board of managers thereof:

1. Have the general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees and the inmates thereof, and of all matters relating to their government and discipline.

2. Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of managers, as may seem to her proper or necessary for the government of such institution and its officers and employees; and for the employment, discipline and education of the inmates thereof.

3. Exercise such other powers and perform such other duties as the board of managers may prescribe. Such superintendent shall also have power to appoint and remove all subordinate female officers and employees, subject to the approval of the board.

Source.—Former State Charities L. (L. 1896, ch. 546) § 144.

Removal of general supervisor.—The general supervisor of the House of Refuge for Women at Hudson, is a subordinate female officer or employee of that institution within the meaning of subd. 3 of the above section, and subject to removal by the superintendent without charges, without assigning any cause, and without notice to any third party under § 3 of art. 10 of the Constitution, which provides that if the term of an office is not fixed by law it "shall be held during the pleasure of the authority making the appointment." *People ex rel. Ray v. Henry* (1900), 47 App. Div. 133, 62 N. Y. Supp. 102.

§ 225. **Oaths and bonds.**—Each manager and superintendent of such institutions shall take the constitutional oath of office and each superintendent shall execute a bond to the people of this state in the sum of five thousand dollars with sureties approved by the state comptroller, which shall be filed in the office of the comptroller. The manager appointed as treasurer of such institution shall give a bond in such amount as the comptroller may direct. The comptroller may require other officers of such institutions to give a bond if in his opinion the interests of the state demand it.

Source.—Former State Charities L. (L. 1896, ch. 546) § 145, as amended by

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L. 1900, ch. 49; originally revised from L. 1881, ch. 187, § 3; L. 1890, ch. 238, §§ 2-3; L. 1892, ch. 637, § 3.

References.—Constitutional oath of office prescribed. Constitution, Art. 13, § 1. Official oaths, generally, Public Officers Law, §§ 10, 13. Official undertakings, *Id.* §§ 11-13.

§ 226. Commitments; papers furnished by committing magistrate.—1. A female between the ages of sixteen and thirty years, or any female of any age committed under the provisions of section eighty-nine of chapter six hundred and fifty-nine of the laws of nineteen hundred and ten, as amended, convicted by any court or magistrate of petit larceny, vagrancy under subdivision three or four of section eight hundred and eighty-seven of the code of criminal procedure, habitual drunkenness, of being a common prostitute, or frequenting disorderly houses or houses of prostitution, or of a misdemeanor, and who is not insane, or mentally or physically incapable of being substantially benefited by the discipline of either of such institutions, may be sentenced and committed to the Western House of Refuge for Women at Albion or the New York State Reformatory for Women at Bedford, to be there confined under the provisions of law relating to such institution. Such commitments shall not be for a definite term, but any such female may be paroled or discharged at any time after her commitment by the board of managers of such institution, but shall not in any case be detained longer than three years. Such commitments to the Western House of Refuge for Women at Albion, shall be from the fourth, fifth, sixth, seventh and eighth judicial districts; to the New York State Reformatory for Women at Bedford, from the first, second, third and ninth judicial districts.

2. The board of managers of each such institution shall furnish the several county clerks of the state with suitable blanks for the commitment of women thereto. Such county clerks shall immediately notify the magistrates of their respective counties of the reception of such blanks and that upon application they will be furnished to them.

3. The magistrate committing a female pursuant to this section shall immediately notify the superintendent of the institution to which the commitment is made of the conviction of such female, and shall cause a record to be kept of the name, age, birthplace, occupation, previous commitments, if any, and for what offenses; the last place of residence of such female, and the particulars of the offense for which she is committed. A copy of such record shall be transmitted, with the warrant of commitment, to the superintendent of such institution, who shall cause the facts stated therein, and such other facts as may be directed by the board of managers, to be entered in a book of records.

4. Such magistrate shall, before committing any such female, inquire into and determine the age of such female at the time of commitment, and her age as so determined shall be stated in the warrant. The statement of the age of such female in such warrant shall be conclusive evidence

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as to such age, in any action to recover damages for her detention or imprisonment under such warrant, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment. (*Amended by L. 1910, ch. 449, and L. 1913, ch. 605.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 146, as amended by L. 1904, chs. 169, 453; L. 1899, ch. 632; originally revised from L. 1881, ch. 187, §§ 7, 8, 9, 10, as amended by L. 1892, ch. 704; L. 1890, ch. 238, §§ 8, 12, 13; L. 1892, ch. 637, §§ 8, 12, 13.

Reference.—Commitment of female convicts, Penal Law, § 2187.

Section 2187 of the Penal Law, providing that any woman over the age of 16 years who shall be convicted of a felony shall, when the sentence imposed is less than one year, "be committed to a house of refuge for women," was not impliedly repealed by the above section. *People ex rel. Olcott v. House of Refuge* (1897), 22 App. Div. 254, 47 N. Y. Supp. 767.

Jurisdiction of magistrate.—A magistrate of the city of New York has no jurisdiction to sentence a woman to the state reformatory for women at Bedford unless she is convicted of one or more of the offenses enumerated therein. *People ex rel. Clark v. Keeper of N. Y. State Reformatory for Women at Bedford*, (1903), 176 N. Y. 465, 68 N. E. 884, affg. (1903), 80 App. Div. 448, 80 N. Y. Supp. 872.

A city magistrate of the city of New York has no jurisdiction summarily to try and convict a woman between the ages of fifteen and thirty years, sentencing her to three years' imprisonment in the state reformatory. This section creates no new crime nor does it extend the jurisdiction of city magistrates. *People ex rel. Stein v. Keeper of State Reformatory* (1904), 44 Misc. 122, 89 N. Y. Supp. 87.

Age of female.—Statement in commitment, as to age of a female committed until she became of age, was conclusive as to her age, and could not be contradicted in habeas corpus proceedings. *People ex rel. Kuhn v. Prot. Epis. House of Mercy* (1892), 133 N. Y. 207, 30 N. E. 853.

Commitment of a female upon a plea of guilty to an indictment for adultery may be made under this section of the State Charities Law, as amended, to the Western House of Refuge, or she may be imprisoned, fined, or both, pursuant to the provisions of the Penal Law. *People ex rel. Sheldon v. Curtin* (1912), 152 App. Div. 364, 136 N. Y. Supp. 516.

Illness of person committed.—The board of managers of the New York State Reformatory for Women at Bedford cannot refuse commitments on account of illness of the person committed. *Rept. of Atty. Genl.* (1912) 395.

Habeas corpus cannot be brought by a woman convicted of disorderly conduct in soliciting as a prostitute and sentenced to a state reformatory for women, as she is held upon a commitment which is in the nature of a final judgment. *People ex rel. St. Clair v. Davis* (1911), 143 App. Div. 579, 127 N. Y. Supp. 1072.

Where, in proceedings by habeas corpus, it appears that a child is held in custody under a commitment issued by a magistrate, the only inquiry is whether the magistrate had jurisdiction of the case and authority to pronounce the judgment rendered for the cause assigned. His decision may not be reviewed, and so it is not essential to return the evidence on the trial. The burden of impeaching its validity rests upon the prisoner. The return in such proceedings is to be assumed to be true, except in so far as its material allegations are controverted by the traverse. *People ex rel. Danziger v. Prot. Epis. House of Mercy* (1891), 128 N. Y. 180, 28 N. E. 473.

§ 227. **Return of females improperly committed.**—Whenever it shall ap-

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pear to the satisfaction of the board of managers of any such institution, that any person committed thereto is not of proper age to be so committed or is not properly committed, or is insane or mentally incapable of being materially benefited by the discipline of any such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned in the custody of one of the persons employed by such boards of managers to convey to such institutions women committed thereto, who shall deliver her into the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be by such magistrate resented for the offense for which she was committed to any such institution and dealt with in all respects as though she had not been so committed. The costs and expenses of the return of such female, necessarily incurred and paid by any such board of managers, shall be a charge against the county from which such female was committed, to be paid by such county to such board of managers in the same manner as other county charges are collected.

Source.—Former State Charities L. (L. 1896, ch. 546) § 147; originally revised from L. 1881, ch. 187, § 10, as amended by L. 1892, ch. 704, § 5; L. 1890, ch. 238, § 14; L. 1892, ch. 637, § 14.

§ 228. **Transfer to other institutions.**—If at any time there shall be more inmates in any one of such institutions than can be properly cared for therein, the board of managers shall so inform the state board of charities. The state board of charities may thereupon authorize and direct the transfer of such excess, or any part of such excess of inmates to such one of the other houses of refuge or state reformatories as the state board of charities may designate. The said board of managers shall thereupon transfer to such other institution such number of inmates, preferably those last received by such institution. Such transfers shall be made as follows: The board of managers shall advise the superintendent of the institution so designated of the number to be so transferred, and this officer shall cause them to be taken to such institution and receive and keep them according to their sentences respectively, the same as if they had been originally sentenced thereto. With the inmates so transferred there shall be furnished certified copies of their sentences and commitments.

Source.—Former State Charities L. (L. 1896, ch. 546) § 147-a, as added by L. 1904, ch. 169, § 2.

Transfer of inmates.—When the New York State Reformatory for Women at Bedford becomes overcrowded the board of managers must notify the State Board of Charities, and it becomes the duty of the State Board of Charities to direct the transfer of the excess inmates to such other house of refuge or reformatory as the Board of Charities may designate. Rept. of Atty. Genl. (1912) 395.

§ 229. **Disposition of children of women so committed.**—If any woman committed to any such institution, at the time of such commitment, is a

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mother of a nursing child in her care under one year of age, or is pregnant with child which shall be born after such commitment, such child may accompany its mother to and remain in such institution until it is two years of age and must then be removed therefrom. The board of managers of any such institution may cause such child to be placed in any asylum for children in this state and pay for the care and maintenance of such child therein at a rate not to exceed two and one-half dollars a week, until the mother of such child shall have been discharged from such institution, or may commit such child to the care and custody of some relative or proper person willing to assume such care. If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.

Source.—Former State Charities L. (L. 1896, ch. 546) § 148; originally revised from L. 1881, ch. 187, § 10, as amended by L. 1892, ch. 704, § 5; L. 1890, ch. 238, § 16; L. 1892, ch. 637, § 16.

§ 230. **Conveyance of women committed.**—The board of managers of each of such institutions shall employ suitable persons, to be known as marshals, to convey from the place of conviction to such institution all women legally committed thereto, and such marshals shall have the power and authority of deputy sheriffs in respect thereto. All expenses necessarily incurred in making such conveyance shall be paid by the treasurer of the board of managers. In case of the commitment of a woman, who, at the time thereof, is the mother of a nursing child or is pregnant, the board of managers shall designate a woman of suitable age and character to accompany the person so committed, along with the officer or representative, authorized in this section to be employed by such managers.

Source.—Former State Charities L. (L. 1896, ch. 546) § 149; originally revised from L. 1881, ch. 187, § 11, as amended by L. 1892, ch. 704; L. 1890, ch. 238, § 17; L. 1892, ch. 637, § 17.

§ 231. **Detentions and rearrests in case of escapes.**—The board of managers of any such institution may detain therein, under the rules and regulations adopted by them, any female legally committed thereto, according to the terms of the sentence and commitment, and conditionally discharge such female at any time prior to the expiration of the term of commitment. If an inmate escape or be conditionally discharged from any such institution, the board of managers may cause her to be rearrested and return to such institution, to be detained therein for the unexpired portion of her term, dating from the time of her escape or conditional discharge. A person employed by the board of managers of any such institution to convey to such institution women committed thereto may

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arrest, without a warrant, an escaped inmate in any county of this state, and shall forthwith convey her to the institution from which she escaped; and a magistrate may cause an escaped inmate to be arrested and held in custody, until she can be removed to such institution, as in the case of her first commitment thereto. A person conditionally discharged from any such institution may be arrested and returned thereto, upon a warrant issued by its president and secretary. Such warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to a person employed by such board of managers to convey to such institutions women committed thereto, and may be executed by such person in any county of this state.

Source.—Former State Charities L. (L. 1896, ch. 546) § 150; originally revised from L. 1881, ch. 187, § 8, as amended by L. 1892, ch. 704, § 3; L. 1890, ch. 238, §§ 9-11; L. 1892, ch. 637, §§ 9-11.

Parol of inmates from the State Reformatory for women at Bedford should be limited to the State of New York. Atty. Genl. Opin. (1915), 4 State Dep. Rep. 511.

Inmates of house of refuge cannot be paroled in custody of nonresidents. Rept. of Atty. Genl. (1899), 341.

Time of detention.—When an inmate of the Western House of Refuge for Women, on parole, has been again committed by a magistrate to the institution, her detention must not exceed three years from the time of the second commitment. Rept. of Atty. Genl. (1914) 328.

A prisoner conditionally discharged before expiration of term may, upon violation of the condition, be rearrested and confined for a period equal to the unexpired portion of such term, although such rearrest and confinement take place after expiration of original term. *People ex rel. Duchaine v. Coon* (1896), 17 Misc. 261, 40 N. Y. Supp. 33.

§ 232. **Employment of inmates.**—The board of managers of each institution shall determine the kind of employment for women committed thereto and shall provide for their necessary custody and superintendence. The provisions for the safe keeping and employment of such women shall be made for the purpose of teaching such women a useful trade or profession and improving their mental and moral condition. Such board of managers may credit such women with a reasonable compensation for the labor performed by them, and may charge them with the necessary expenses of their maintenance and discipline, not exceeding the sum of two dollars per week. If any balance shall be found to be due such women at the expiration of their terms of commitment, such balance may be paid to them at the time of their discharge. To secure the safe keeping, obedience and good order of the women committed to any such institution, the superintendent thereof has the same power as to such women as keepers of jails and penitentiaries possess as to persons committed to their custody.

Source.—Former State Charities L. (L. 1896, ch. 546) § 151; originally revised from L. 1881, ch. 187, §§ 12, 13, as amended by L. 1892, ch. 704, § 7; L. 1890, ch. 238, §§ 18, 19; L. 1892, ch. 637, §§ 18, 19.

§ 233. **Clothing and money to be furnished discharged inmates.**—The

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board of managers of any such institution may, in their discretion, furnish to each inmate of such institution who shall be discharged therefrom, necessary clothing not exceeding twelve dollars in value, or if discharged between the first day of November and the first day of April to the value of not exceeding eighteen dollars, and ten dollars in money, and a ticket for the transportation of one person from such institution to the place of the conviction of such inmate, or to such other place as such inmate may designate, at no greater distance from such institution than the place of conviction.

Source.—Former State Charities L. (L. 1896, ch. 546) § 152; originally revised from L. 1881, ch. 187, §§ 12, 13, as amended by L. 1892, ch. 704, § 7; L. 1890, ch. 238, §§ 18, 19; L. 1892, ch. 637, §§ 15.

ARTICLE XIII.

[Former article 18, thus renumbered by L. 1909, ch. 258.]

NEW YORK STATE WOMAN'S RELIEF CORPS HOME.

- Section 250. Establishment of home.
 251. Board of managers.
 252. Official oath.
 253. Compensation and expenses. (Repealed.)
 253. Organization of board.
 254. Report to legislature.
 255. Admission to home.
 256. Powers of board of managers.
 257. Record.

§ 250. *Establishment of home.*—The home for the aged dependent veteran and his wife, veterans' mothers and widows and army nurses, known as "New York state woman's relief corps home," is hereby continued. (*Former § 320, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1894, ch. 468, § 1, as amended by L. 1897, ch. 47, § 1.

§ 251. *Board of managers.*—The home shall be under the control of a board of seven managers, appointed in accordance with the provisions of section fifty-one of this chapter, a majority of whom shall be appointed from the members of the grand army of the republic of the department of New York and the women's relief corps, auxiliary to the grand army of the republic, department of New York. Appointments shall be so made that there will be at all times four women and three men members of said board. (*Former § 321, renumbered by L. 1909, ch. 258, and amended by L. 1910, ch. 449.*)

Source.—L. 1894, ch. 468, § 2, as amended by L. 1906, ch. 451, § 1.

§ 252. *Official oath.*—Before entering on their duties the said managers shall respectively take and subscribe to the usual oath of office, which oath may be taken and subscribed before the judge of any court of record of

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this state, or any notary public having a seal, and shall be filed in the office of the secretary of state. (*Former § 322, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1894, ch. 468, § 3.

References.—Official oath prescribed, Constitution, Art. 13, § 1. Official oaths, and effect of failure to take, Public Officers Law, §§ 10, 13.

§ 253. Compensation and expenses.—(*Renumbered by L. 1909, ch. 258, and repealed by L. 1910, ch. 449, § 19.*)

Source.—L. 1894, ch. 468, § 4.

§ 253. Organization of board.—It shall be the duty of said board of managers to elect a president, secretary and an executive committee from their number. (*Former § 324; renumbered 254 by L. 1909, ch. 258, and 253 by L. 1910, ch. 449.*)

Source.—L. 1894, ch. 468, § 5, as amended by L. 1906, ch. 451.

§ 254. Report to legislature.—Said board of managers shall annually on or before January fifteenth, make to the legislature a detailed report of its proceedings for the preceding fiscal year, together with a complete statement of its receipts and expenditures, the condition of the institution, and full estimates of the appropriation required for its maintenance, including therein ordinary repairs. It shall also include in its report a statement of any special appropriations required and the reasons therefor. (*Former § 325, renumbered 255 by L. 1909, ch. 258 and 254 by L. 1910, ch. 449.*)

Source.—L. 1894, ch. 468, § 6, as amended by L. 1907, ch. 597.

§ 255. Admission to home.—Every honorably discharged soldier or sailor or marine who served in the army or navy of the United States, for a period not less than ninety days, during the war of the rebellion, and who shall have been a resident of this state for one year next preceding the application for admission, and the wife, widow and mother of any such honorably discharged soldier or sailor or marine, and army nurses who served in said army or navy and whose residence was at the time of the commencement of such service, or whose residence shall have been for one year next preceding his or her application for admission to said home within the state of New York, and who shall need the aid or benefit of said home in consequence of physical disability or other cause within the scope of the regulations of the board, shall be entitled to admission to said home after the approval of the application by the board of managers and subject to the conditions, limitations and penalties prescribed by the rules and regulations adopted by said board. Provided, however, said soldier or sailor or marine shall be a married man and shall be accompanied or attended by his wife during the time he may be an inmate of said home, and in case of the death of the wife, while an inmate of said home, the veteran may remain an inmate of said home with the consent of the superintendent, ap-

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proved by the board of managers, but no wife or widow of a soldier or sailor or marine shall be admitted as an inmate of said home unless due and sufficient proof is presented of her marriage to such soldier or sailor or marine at least fifteen years prior to the date of such application. The board of managers shall require an applicant for admission to such home to file with the application for admission his own affidavit of residence and in addition hereto the affidavit of at least two householders in and residents of the county of which he claims at the time of such application to be a resident; and such affidavits shall on presentation be accepted and received as sufficient proof, unless contradicted, of the residence of such applicant in any actions or proceedings against such county in which such residence of such applicant is material. If, after having been an inmate of such home, an honorably discharged soldier, sailor or marine, or the wife or widow of an honorably discharged soldier, sailor or marine, or an army nurse, shall reassume his or her former residence in any county, or shall acquire a new residence in any other county, and shall become entitled to relief as provided by article six of the poor law, the poor authorities within whose jurisdiction such honorably discharged soldier, sailor or marine, or the wife or widow of an honorably discharged soldier, sailor or marine, or an army nurse, resides, may, instead of providing relief as required by the poor law, return him or her to such home, to be maintained therein. (*Former § 326 amended by L. 1909, ch. 240; renumbered 256, by L. 1909, ch. 258; amended by L. 1910, ch. 133; renumbered 255 by L. 1910, ch. 449; and amended by L. 1911, ch. 601 and L. 1912, ch. 310.*)

Source.—L. 1894, ch. 468, § 8, as amended by L. 1907, ch. 597.

Admission of widow.—Where a veteran has been absent from his family and out of the state for more than seven years, his widow is entitled to admission to the New York Women's Relief Corps Home, the other requirements of this section being complied with. Rept. of Atty. Genl. (1909) 868.

Widow of a Union soldier, remarried to another Union soldier after 1880, is not entitled to admission. Rept. of Atty. Genl. (1899) 301.

§ 256. Powers of board of managers.—The board of managers shall have charge of all of the affairs of the institution, with power to make all necessary by-laws, rules and regulations for its government and proper management, and for the admission and discharge of inmates. It shall have power to select a treasurer, to appoint and remove a superintendent of the institution, who shall be its chief executive officer. It shall also have power to appoint such other subordinate officers as may be necessary, and for just cause remove any or all of them from office. Under proper rules and regulations and in accordance with the provisions of the civil service law they may delegate the power to hire and discharge subordinate employees to the superintendent. (*Former § 327 renumbered 257 by L. 1909, ch. 258 and 256 by L. 1910, ch. 449.*)

Source.—L. 1894, ch. 468, § 9, as added by L. 1906, ch. 451.

§ 257. Record.—The board of managers shall keep in a book provided

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for that purpose and kept in the institution, a fair and full record of the doings of the board, which shall be open at all times to the inspection of its members and such other persons and officers of the state as are by law vested with the powers of visitation and inspection, or appointed by the governor, the legislature or other competent authority to make an inspection or investigation of the institution. (*Former § 328 renumbered 258 by L. 1909, ch. 258 and 257 by L. 1910, ch. 449.*)

Source.—L. 1894, ch. 468, § 10, as added by L. 1906, ch. 451.

ARTICLE XIV.

[Former article 19, thus renumbered by L. 1909, ch. 258.]

THOMAS INDIAN SCHOOL.

Section 270. Establishment of asylum.

271. Board of managers.

272. Powers and duties of board of managers.

273. Officers; salaries.

274. Superintendent, powers and duties.

275. Treasurer, powers and duties.

276. Transfers to other institutions.

§ 270. **Establishment of asylum.**—The Thomas Indian school, established on the Cattaraugus reservation in the county of Erie, is continued. Said asylum may sue and be sued in the corporate name of "Thomas Indian school" and service of process and papers may be made upon the superintendent or any manager of such asylum. (*Former § 340, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 160; originally revised from L. 1895, ch. 38, §§ 1, 8.

§ 271. **Board of managers.**—Said asylum shall be under the control and management of a board of managers, consisting of seven members, three of whom shall be Seneca Indians. Such managers shall be appointed in accordance with the provisions of section fifty-one of this chapter. (*Former § 341 renumbered by L. 1909, ch. 258, and amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 161; originally revised from L. 1895, ch. 38, § 2.

§ 272. **Powers and duties of board of managers.**—The board of managers shall have the general direction and control of all the property and concerns of said asylum, not otherwise provided for by law. They may acquire and hold, in the name of and for the people of the state of New York, property, by grant, gift, devise or bequest, except reservation lands, which may be held by those managers who are Seneca Indians, to be ap-

plied to the maintenance of orphan and destitute Indian children, and the general use of the asylum. They shall:

1. Adopt, with the approval or consent of the state board of charities, by-laws for the regulation and management of said asylum, and regulating the appointment and duties of officers, assistants and employees of the asylum, and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the same.

2. Take care of the general interests of the asylum, and see that its design is carried into effect according to law, and its by-laws, rules and regulations. They shall, on application, receive destitute and orphan Indian children from any of the several reservations located within this state, and shall furnish them such care, moral training and education, and such instruction in husbandry and the arts of civilization as shall be prescribed by their by-laws, rules and regulations.

3. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor, the state board of charities or any person appointed to examine the same by the governor, the state board of charities, the fiscal supervisor, or either house of the legislature.

4. Enter in a book kept by them for that purpose, the date of each visit, the condition of the asylum and the children therein, and its property, and all such managers present shall sign such entries.

5. Make, annually, on or before the fifteenth day of January, a report to the legislature of the condition of said asylum, including a true account, in detail, of the receipts and disbursements of all moneys that shall come into their hands, or under their control, the number, age and sex of such destitute orphan children in said asylum, with the name of the reservation to which they belong, and the proportion of the year each has been maintained and instructed in said asylum, and such suggestions and recommendations as they may deem proper, or which may be required of them by the state board of charities. (*Former § 342 amended by L. 1909, ch. 149, renumbered by L. 1909, ch. 258, and amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 162; originally revised from L. 1895, ch. 38, § 3.

§ 273. Officers; salaries.—Such board shall appoint for the asylum, as often as necessary, and for cause, after an opportunity to be heard, remove:

1. A superintendent, a matron and a well educated physician, who shall be a graduate of an incorporated medical college.

2. A treasurer, who shall give a bond to the people of the state for the faithful performance of his trust, with such sureties and in such amount as the comptroller of the state shall approve. The superintendent, matron and other assistants shall constantly reside in the school, or on the premises, and shall be designated the resident officers of the school. The physi-

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cian shall visit said school at such times, and perform such duties as shall be prescribed by the by-laws, rules and regulations of the school. The salary classification commission shall from time to time, with the approval of the governor, as provided by section seventeen of the state finance law, fix the annual salaries and allowances of such officers. Such salaries shall be paid in equal monthly installments by the treasurer on the warrant of the board of managers, countersigned by the superintendent thereof, and certified as correct. (*Subd. 2 of former § 343, thus amended by L. 1909, ch. 149 and former § 343, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 163; originally revised from L. 1895, ch. 38, § 4.

§ 274. **Superintendent, powers and duties.**—The superintendent shall be the chief executive officer of said asylum, and in the absence or sickness of the superintendent the matron shall perform the duties and be subject to the responsibilities of the superintendent. Subject to the by-laws, rules and regulations established by the board of managers, such officer shall have the general superintendence of the buildings, grounds and farm, together with their furniture, fixtures and stock, and shall:

1. Daily ascertain the condition of all the children and prescribe their conduct.

2. Appoint, with the approval of the board of managers, the other resident officers, assistants and employees not otherwise provided for, that they may think necessary for the economical and efficient performance of the business of the asylum, and prescribe their duties, and discharge them when necessary.

3. Cause full and fair accounts and records of all his doings, and of the entire business and operation of the asylum, to be kept regularly, from day to day, in books provided for that purpose.

4. See that all such account and records are justly made up for the annual report to the legislature, as required by this article, and present the same to the board of managers, who shall incorporate them into their report to the legislature.

5. Keep a book, in which shall be entered, at the time of the reception of any child, his name, age, residence, and the names of his parents (if any), to what reservation and tribe he belongs, and the date of such reception, and by whom brought, and the condition of the general health of such child. (*Former § 344, renumbered by L. 1909, ch. 258, and amended by L. 1910, ch. 449.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 164; originally revised from L. 1895, ch. 38, § 5.

Superintendent may be removed and another appointed in his stead by the board of managers. Rept. of Atty. Genl. (1895) 118.

§ 275. **Treasurer, powers and duties.**—The treasurer shall have the cus-

tody of all moneys, obligations and securities belonging to the asylum. He shall:

1. Open with some good and solvent bank, conveniently near the asylum, an account in his name as such treasurer, and deposit all moneys, upon receiving the same, therein, and draw from the same in the manner prescribed by the by-laws, specifying the object of payment.

2. Keep a full and accurate account of all receipts and payments in the manner directed by the by-laws, and such other accounts as the board of managers shall prescribe, and render a statement to the board of managers whenever required by them. (*Former § 345, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 165; originally revised from L. 1895, ch. 38, § 6.

References.—Monthly statements of receipts and expenditures, State Charities Law, § 42. Deposit of moneys by state charitable institutions, State Finance Law, § 11; accounts of receipts and expenditures to be itemized, Id. § 17.

§ 276. **Transfers to other institutions.**—Whenever the number of Indian children in the Thomas Indian school on the Cattaraugus reservation, duly admitted thereto, shall be in excess of its proper capacity, or the applications for admission of such Indian children to said asylum shall exceed its proper accommodations therefor, or whenever, in the opinion of the trustees of said asylum, the comfort and well-being of any such Indian children therein will likely be promoted by their removal to other asylums, hospitals or institutions for the custody, care and treatment of orphan, dependent or sick children, they may, with the approval of the state board of charities, contract with the managers or other authorities of such asylums, hospitals or institutions as they may deem desirable for the reception, care and treatment of such Indian children, as may, from time to time, be transferred thereto, at a fixed weekly per capita rate not exceeding two dollars, except in the case of sick children requiring hospital treatment and care, when the fixed weekly per capita rate shall not exceed three dollars. (*Former § 346, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1896, ch. 242, § 1.

ARTICLE XV.

[Former article 20, thus renumbered by L. 1909, ch. 258.]

LICENSING DISPENSARIES.

Section 290. Definition of dispensary.

291. Licensing of dispensaries by the state board of charities.

292. Rules and regulations.

293. Revocation of licenses.

294. Drug store or tenement house not to be used by dispensary: unlawful display of signs.

295. Violation of article, misdemeanor.

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296. Obtaining surgical or medical treatment on false representations, misdemeanor.

§ 290. **Definition of dispensary.**—For the purposes of this article, a “dispensary” is declared to be any person, corporation, institution, association or agent, whose purpose it is, either independently or in connection with any other purpose, to furnish, at any place or places, to persons nonresident therein, either gratuitously or for a compensation determined without reference to the value of the thing furnished, medical or surgical advice or treatment, medicine or apparatus, provided, however, that the moneys used by and for the purposes of said dispensary shall be derived wholly or in part from trust funds, public moneys or sources other than the individuals constituting said dispensary and the persons actually engaged in the distribution of charities of said dispensary. (*Former § 350, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 19, as added by L. 1899, ch. 368, § 1.

Dispensary as used in this section does not include corporations formed for the practice and supplying of medicine for compensation. Rept. of Atty. Genl. (1902) 170.

§ 291. **Licensing of dispensaries by the state board of charities.**—A license may be issued by the state board of charities to a dispensary, as provided in this section. An application in writing for such license shall be made to such board in the form and manner prescribed by it, which shall be uniform for all schools of medicine. There shall be attached to such application a statement, verified by the oath of the applicant, containing such facts as the board may require. If, in the judgment of such board, the statement filed, and other evidence submitted in relation to such application, indicate that the operations of said dispensary will be for the public benefit, a license shall be issued to the dispensary applying therefor. The form of such license shall be prescribed by the board. A dispensary shall not enter upon the execution, or continue the prosecution of its purpose unless licensed by the state board of charities, as provided in this article. A license shall be issued, on application, to all dispensaries legally incorporated, and to unincorporated dispensaries conducted in connection with incorporated institutions on April eighteenth, eighteen hundred and ninety-nine. (*Former § 351, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 20, as added by L. 1899, ch. 368.

Application of section. Rept. of Atty. Genl. (1901) 223.

Tuberculosis dispensaries supported by public moneys or trust funds cannot be maintained by local boards of health without being licensed by the state board of charities. Rept. of Atty. Genl. (1910) 616.

§ 292. **Rules and regulations.**—The state board of charities shall make rules and regulations, and alter or amend the same, in accordance with which all dispensaries shall furnish and applicants obtain medical or sur-

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gical relief, advice or treatment, medicine or apparatus. But such rules and regulations shall not in any case specify the particular school of medicine in accordance with which a dispensary shall manage or conduct its work or determine the kind of medical or surgical treatment to be provided by any dispensary. (*Former § 352, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 21, as added by L. 1899, ch. 368.

§ 293. **Revocation of licenses.**—The state board of charities or any of its members may at any and all times visit and inspect licensed dispensaries. They may examine all matters in relation to said dispensaries, and ascertain how far they are conducted in compliance with this law and the rules and regulations of the board. After due notice to a dispensary, and opportunity for it to be heard, the board may, if public interest demands, and for just and reasonable cause, revoke a license by an order signed and attested by the president and secretary of the board. Such order shall state the reason for revoking such license, and shall take effect within such time after the service thereof upon the dispensary as the board shall determine. The said board is hereby directed to apply to the supreme court to revoke the license and annul the incorporation of any dispensary legally incorporated, or conducted in connection with an incorporated institution on April eighteenth, eighteen hundred and ninety-nine, for wilful violation of the rules and regulations made by said board. (*Former § 353, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 22, as added by L. 1899, ch. 368.

§ 294. **Drug store or tenement house not to be used by dispensary; unlawful display of signs.**—After April eighteenth, eighteen hundred and ninety-nine, no dispensary shall make use of any place commonly known as a drug store, or any place or building defined by law or by an ordinance of the board of health as a tenement house; nor after such time shall any person, corporation, institution, society, association, or agent thereof, except a duly licensed dispensary, display or cause to be displayed a sign or other thing which could directly or indirectly or by suggestion indicate the existence of the equivalent, in purpose and effect, of a dispensary. (*Former § 354, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 23, as added by L. 1899, ch. 368.

Violation of this section by displaying the word "Clinic" on a sign. Rept. of Atty. Genl. (1905) 387.

§ 295. **Violation of article, misdemeanor.**—Any person who wilfully violates any of the provisions of this article, or any of the rules and regulations made and published under the authority of this article, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by

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a fine of not less than ten dollars and not more than two hundred and fifty dollars. (*Former § 355, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 24, as added by L. 1899, ch. 368.

§ 296. Obtaining surgical or medical treatment on false representations, misdemeanor.—Any person who obtains medical or surgical treatment on false representations from any dispensary licensed under the provisions of this article, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten dollars and not more than two hundred and fifty dollars. (*Former § 356, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 25, as added by L. 1899, ch. 368.

ARTICLE XVI.

[Former article 21, thus renumbered by L. 1909, ch. 258.]

LICENSES FOR PLACING OUT DESTITUTE CHILDREN.

Section 300. Definitions.

- 301. Placing out destitute child without license prohibited.
- 302. Issue of licenses; revocation.
- 303. Record to be kept.
- 304. Visitation by state board of charities.
- 305. Religious faith.
- 306. Order prohibiting placing out of children; notice; revocation.
- 307. Certiorari to review decision.
- 308. Penalty for violations.

§ 300. Definitions.—When used in this article the term “destitute child” means an orphan, abandoned or destitute minor, under the age of sixteen years, who is an inmate of a public or private charitable institution or is maintained by or dependent upon public or organized charity. The term “place out,” when used in this article, means the placing of a destitute child in a family, other than that of a relative within the second degree, for the purpose of providing a home for such child. The term “board,” when used in this article, means the state board of charities. (*Former § 360, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 1.

§ 301. Placing out destitute child without license prohibited.—It is hereby made unlawful for any person or corporation, other than a charitable or benevolent institution, society or association, or society for the prevention of cruelty to children, now or hereafter duly incorporated under the laws of this state, or a local officer charged with the relief of the poor and placing out in the manner now provided by law, to place out any destitute child, directly or indirectly, unless such person or corpora-

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tion shall be duly licensed, as hereinafter provided, by the state board of charities, to place out destitute children. Nor shall any local officer charged with the relief of the poor, directly or indirectly, place out any child or children in a family not residing within this state, nor employ any person as agent, deputy or proxy to find homes for, or to place out children unless such person shall be licensed by the state board of charities to place out children, or be regularly employed to place out children by one of the institutions, societies or associations above exempted. (*Former § 361, renumbered by L. 1909, ch. 258, and amended by L. 1910, ch. 449.*)

Source.—L. 1898, ch. 264, § 2.

§ 302. **Issue of licenses; revocation.**—The state board of charities is hereby authorized to issue licenses to such persons or corporations as apply therefor, and, in the judgment of said board, are proper to place out children, empowering such licensees to place out destitute children. Any such license may be revoked by said board, in its discretion, on reasonable notice to such licensee and after affording such licensee an opportunity to be heard before said board. The reason for not granting any such license within six months after application has been made therefor, or for revoking a license, shall be entered in full in the minutes of said board. (*Former § 362, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 3.

§ 303. **Record to be kept.**—Any person or corporation who shall place out a destitute child shall keep and preserve a record of the full name and actual or apparent age of such child, the names and residence of its parents, so far as known, and the name and residence of the person or persons with whom such child is placed. If such person or corporation shall subsequently remove such child from the custody of the person or persons with whom it was placed, the fact of such removal and the disposition made of such child shall be entered upon such record. (*Former § 363, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 4.

§ 304. **Visitation by state board of charities.**—The state board of charities, through any member, officer or duly authorized inspector of said board, is hereby authorized to visit, in his discretion, any child under the age of sixteen years, not legally adopted, placed out by any person or corporation mentioned in section three hundred and one of this article, or by any person licensed by said board to place out destitute children. (*Former § 364, thus renumbered and amended by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 5.

§ 305. **Religious faith.**—In every case where practicable any child placed out shall be placed with individuals of like religious faith as the parents of the child. (*Former § 365, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 6.

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§ 306. Order prohibiting placing out of children; notice; revocation.—Whenever the state board of charities shall decide by the affirmative vote of a majority of its members that any person or corporation has placed out children for purposes of gain, or without due inquiry as to the character and reputation of the persons with whom such children are placed, and with the result that such children are subjected to cruel or improper treatment or neglect or immoral surroundings, the said board may issue an order prohibiting such person or corporation from thereafter placing out children. No such order shall be issued unless such person or corporation has had reasonable notice, with a copy of the charge, and an opportunity to be heard before said board, and a full record of the proceedings and decision on such hearings shall be kept by said board. Any such order issued by said board may be revoked by said board. (*Former § 366, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 7.

§ 307. Certiorari to review decision.—Any person or corporation who may feel aggrieved by the decision of the state board of charities in issuing any order pursuant to the provisions of section three hundred and six of this article, may apply to any judge of the supreme court in the judicial district in which such person resides, or in which the chief office of such corporation is situated, for a writ of certiorari, and upon the return of such writ the reasonableness of such decision shall be subject to review by the supreme court of this state. (*Former § 367, thus renumbered and amended by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 8.

§ 308. Penalty for violations.—Any person or corporation who shall wilfully violate any of the provisions of this article or shall place out a child in violation of an order issued under the provisions of section three hundred and six of this article, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or not less than fifty and of not more than two hundred and fifty dollars. (*Former § 368, thus renumbered and amended by L. 1909, ch. 258.*)

Source.—L. 1898, ch. 264, § 9.

ARTICLE XVII.

[Former article 12, thus renumbered by L. 1909, ch. 258.]

AGED, DECREPIT AND MENTALLY ENFEEBLED PERSONS.

Section 320. Supervision of state board of charities.

321. Licensing of institutions.

322. Voluntary applications for admission.

323. Application on behalf of incompetent.

324. Discharge of patient.

L. 1909, ch. 56. Aged, decrepit and mentally enfeebled persons. §§ 320-324.

§ 320. **Supervision of state board of charities.**—It shall be lawful for the state board of charities, to exercise supervision over all aged, decrepit and feeble-minded persons who are not proper subjects for care and treatment in a hospital for the insane, but who, on application by themselves, or by their relatives, or if without relatives, then by their friends or legal guardians, seek to obtain admission into any homes, retreats or other asylums which may be authorized under the provisions of this article to receive and administer to their necessities in a safe and humane manner. (*Former § 170, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1896, ch. 914, § 1.

§ 321. **Licensing of institutions.**—The state board of charities, in the exercise of such official supervision, is hereby empowered to license any home, retreat or other asylum devoted to the sole purpose of keeping and caring for such aged, decrepit or mentally enfeebled persons whenever in the judgment of said board such home, retreat or asylum possesses the necessary equipment in officers and attendants, together with suitable domestic accommodations in all other respects, for the safe and humane maintenance of such patients. And the power of exercising supervision over such institutions by the state board of charities, and of visiting and inspecting them and their inmates at all times shall be the same as now belongs to them in respect to the other institutions under their care. (*Former § 171, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1896, ch. 914, § 2.

§ 322. **Voluntary applications for admission.**—Any person not a minor may voluntarily enter such a licensed institution upon filing an application of his intention with the superintendent thereof, supported by the affidavit of two reputable physicians of the place of residence of such person, certifying to the fact that the said applicant, though aged, decrepit or mentally enfeebled, is not insane nor a proper subject for treatment in a hospital for the insane, and that he goes there with the consent of his relatives, friends or legal guardians. (*Former § 172, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1896, ch. 914, § 3.

§ 323. **Application on behalf of incompetent.**—In case such applicant be incompetent to act for himself, a similar application may be made in his behalf by any relative, friend or legal guardian in whose charge, or by whose assistance he is maintained, and the superintendent of such institution is hereby authorized to receive him in like manner as above stated. (*Former § 173, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1896, ch. 914, § 3.

§ 324. **Discharge of patient.**—Any patient upon application made to the state board of charities by him, or his friends or legal guardians, may be dis-

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charged from any such home, retreat or asylum, and placed in the care of his friends or other suitable place as the said board, in their judgment, may deem best. (*Former § 174, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1896, ch. 914, § 5.

ARTICLE XVIII.

[Former article 9, thus renumbered by L. 1909, ch. 258.]

CARE OF INEBRIATE WOMEN.

Section 340. Saint Saviour's sanitarium.

341. Commitment; certificate.

342. Application for commitment; who may make; proceedings upon.

343. Appeal; stay.

344. Habeas corpus.

345. House of the Good Shepherd.

346. Commitment; certificate; term.

347. To be kept apart from other inmates.

348. Right to habeas corpus.

§ 340. Saint Saviour's sanitarium.—The corporation known as Saint Saviour's sanitarium, now established and existing in the city of New York, for the reception and reformation of inebriate women, is hereby authorized and empowered to receive all such females as its trustees shall deem suitable subjects for its care, who may voluntarily surrender themselves, or who may be committed to its custody in the manner hereinafter provided, and to retain such females in its custody so long as may be necessary in the judgment of said trustees for treatment and reformation, not exceeding one year, or until discharged therefrom as hereinafter provided. (*Former § 120, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 467, § 1, as amended by L. 1899, ch. 246.

References.—Establishment of colonies for inebriates in cities, General Municipal Law, §§ 136-139-a. Commitment of inebriates to institutions, Insanity Law, §§ 173-175.

§ 341. Commitment; certificate.—Any judge of a court of record in the county or district where an alleged inebriate female resides, may commit such female to said sanitarium in the manner hereinafter provided upon a proper application and upon the consent in writing of the trustees thereof, signed by their superintendent or executive officer, and upon the certificates in writing of two physicians, under oath, showing that such female is over the age of eighteen years and is incapable or unfit to properly conduct herself or her own affairs, or is dangerous to herself or others by reason of habits of periodical, frequent or constant drunkenness induced either by the use of alcoholic or vinous or other liquors, or opium, morphine or other narcotic or intoxicating or stupefying substance. But it must appear from each such certificate that the physician executing the same is a graduate of some

incorporated medical college, and is a permanent resident of the state, and has been in the actual practice of his profession for at least three years, and it must also appear upon the face of such certificate that the physician executing the same has made a personal examination of the female alleged to be an inebriate, and that such examination has been made within twenty days prior to the application for the commitment. (*Former § 121, thus re-numbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 467, § 2, as amended by L. 1899, ch. 246.

§ 342. Application for commitment; who may make; proceedings upon.—Any person with whom an alleged inebriate female resides, or the husband, father, mother, brother or sister, or the child of any such female, may apply to any such judge for the commitment of such female, by presenting a verified petition containing a statement of the facts upon which the allegation of inebriety is based and by reason of which the application is made. Such petition shall be accompanied by the certificates of the physicians and the consent of the trustees as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be an inebriate. The judge to whom the application is made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him, but he shall state in a certificate to be attached to the petition his reasons for dispensing with personal service of such notice, and if substituted service is directed, he shall state the name of the person upon whom such substituted service is to be made. The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged inebriate, proceed to determine the question of inebriety, and if satisfied that the alleged inebriate is a suitable subject for the care of said sanitarium may forthwith commit her to said sanitarium. Such judge may, in his discretion, require other proofs in addition to the petition and certificates of the physicians. Upon the demand of such alleged inebriate or of any relative or friend in her behalf, the judge shall, or he may upon his own motion, issue an order directing a hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the alleged inebriate and upon the party making the application and upon such other persons as the judge in his discretion may name. Upon the day fixed by such order, or upon such other day to which the proceeding shall be regularly adjourned, he shall hear the testimony introduced by the parties and examine the alleged inebriate, if deemed advisable, in or out of court, and render a decision in writing as to the inebriety of such female. If he shall determine that such female is an inebriate, he may forthwith commit her to said sanitarium. If such judge can not hear the application, he may, in his order directing the hearing, appoint a referee who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall forthwith make the commit-

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ment or state his reasons in writing for refusing the application. Whenever a commitment is made under this article the petition of the applicant, the certificates of the physicians, the commitment and all other papers relating thereto shall be filed with the superintendent or executive officer of said sanitarium. (*Former § 122, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 467, § 3, as amended by L. 1899, ch. 246.

§ 343. **Appeal; stay.**—A female committed pursuant to this statute or any relative or friend in her behalf may, within thirty days after the making of such commitment, appeal therefrom to a justice of the supreme court other than the justice making the commitment, who shall cause a jury to be summoned as in the case of proceedings for the appointment of a committee for an insane person, and shall try the question of such inebriety in the manner provided by law for proceedings for the appointment of such committee. If the verdict of the jury be that such female is an inebriate, the justice by whom the appeal is heard shall certify that fact and shall remand such female to the care and custody of the sanitarium. Proceedings under the commitment shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court made upon notice and after a hearing, containing a provision for such temporary care or confinement of the alleged inebriate as may be deemed necessary. Upon the refusal of a judge to grant an application for the commitment of an alleged inebriate he shall state his reasons for such refusal in writing, and the person making the application may appeal therefrom in the manner hereinbefore provided for an appeal from a commitment, and the justice before whom such appeal is heard may make a commitment as upon the original hearing. (*Former § 123, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 467, § 4, as amended by L. 1899, ch. 246.

§ 344. **Habeas corpus.**—Any female who has been committed to said sanitarium is entitled to a writ of habeas corpus upon a proper application made by her or by any relative or friend in her behalf. Upon the return of such writ, the fact of her inebriety and the reasons for the further detention of such female in said sanitarium shall be inquired into and determined. The superintendent or executive or medical officer in charge of the sanitarium, or any proper person, shall be sworn and examined as to the mental and physical condition of such female. If it appears upon such hearing that such female may properly be discharged, the judge before whom the hearing is had shall so direct; but if it shall appear that the condition of such female is such as to render further treatment desirable, he shall remand her to the care and custody of said sanitarium. (*Former § 124, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 467, § 5, as amended by L. 1899, ch. 246.

§ 345. **House of the Good Shepherd.**—The corporation known as the House of the Good Shepherd, now established and existing in the city of

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New York, is hereby authorized and empowered to receive and retain in its custody all such females as its trustees shall deem suitable subjects for its care who may voluntarily surrender themselves as who may be committed to its custody in the manner and for the term hereinafter provided, or for so much of such term as may be necessary, in the judgment of said trustees, for treatment and reformation. (*Former § 125, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1895, ch. 877, § 1.

§ 346. **Commitment; certificate; term.**—Any judge or justice of a court of record in the county or district where an alleged inebriate female resides may commit such female to such house upon the consent, in writing of the trustees thereof, signed by the reverend mother superintendent or executive officer of said house, and upon the certificate in writing of two physicians under oath, showing that such female is over the age of eighteen years and is incapable or unfit to properly conduct herself or her own affairs or is dangerous to herself or others by reason of habits of periodical, frequent or constant drunkenness, induced either by the use of alcoholic, vinous or other liquors, or opium, morphine or other narcotic or intoxicating or stupefying substance. But it must appear from such certificate that every physician executing the same is a graduate of some incorporated medical college and is a permanent resident of the state and has been in the actual practice of his profession for at least three years, and it must also appear on the face of such certificate that the physicians executing the same have made a personal examination of the female alleged to be an inebriate, and that such examination has been had within twenty days prior to the application for the commitment. The judge or justice to whom the consent and certificate are presented may require affidavits to be submitted in support of the allegations contained in such certificate, or may institute an inquiry to take proof as to such facts before making the commitment. No such commitment shall be for a longer term than one year, but the same may be renewed for a like term or terms upon a proceeding taken as hereinbefore prescribed in the case of an original commitment. (*Former § 126, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1895, ch. 877, § 2.

A woman incompetent to manage her affairs because of habitual drunkenness may be dealt with under this section. *People ex rel. Olin v. Warden of District Prison* (1915), 170 App. Div. 289, 155 N. Y. Supp. 905, *affd.* (1916), 218 N. Y. 704, 113 N. E. 1064.

§ 347. **To be kept apart from other inmates.**—Females committed to the House of the Good Shepherd pursuant to the provisions of the last two sections must be kept separate and apart from the other inmates of said house. (*Former § 127, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1895, ch. 877, § 3.

§ 348. **Right to habeas corpus.**—Nothing herein contained shall be con-

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strued to limit the right of the court to review by habeas corpus the detention of any person committed under the last three sections. (*Former* § 128, *thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1895, ch. 877, § 4.

ARTICLE XIX.

[Former article 16, thus renumbered by L. 1909, ch. 258.]

BERKSHIRE INDUSTRIAL FARM.

(Title amended by L. 1917, ch. 109.)

L. 1917, ch. 109, § 3.—The use, indifferently, since February sixteenth, nineteen hundred and nine, of the names "Burnham Industrial Farm" and "Berkshire Industrial Farm" by the corporation continued under the former provisions of section three hundred and sixty of the state charities law, or by any court, officer or person, is hereby legalized, validated and confirmed, and shall be deemed to have referred to such corporation with the same force and effect as if the name used were then the true and lawful name of such corporation. The identity of such corporation shall not be affected nor its rights, duties or obligations impaired by this act or by the use heretofore of either or both of such names.

Section 360. Institution continued; powers.

361. Objects of corporation.

362. Board of directors.

363. Election of directors.

364. Quorum to do business.

365. Custody of boys, how acquired; notice to corporation.

366. Commitments of boys by magistrates to care of corporation; effect of commitments.

367. Truant homes and charitable institutions, transfer of certain boys by.

368. Power of corporation as to boys in its care; corporation to act as guardian and enforce terms of indenture.

369. Statements as to age.

370. Reports.

371. Property exempt from taxation.

372. Powers and liabilities.

§ 360. Institution continued; powers.—The body corporate known prior to August twenty-fifth, eighteen hundred and ninety-six, by the name of the "Burnham Industrial Farm," the name of which was, on that day, changed to "Berkshire Industrial Farm," which corporation was continued by the former provisions of this section, taking effect February seventeenth, nineteen hundred and nine, under the name and style of "Burnham Industrial Farm," is hereby continued as the "Berkshire Industrial Farm," and by the latter name shall have power to take by gift, lease, purchase, devise or bequest real and personal property and hold the same for the proper uses and purposes of said corporation; provided that the annual income from such real estate shall not exceed fifty thousand dollars. (*Former* §

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280, *renumbered by L. 1909, ch. 258, and amended by L. 1917, ch. 109, in effect Mch. 30, 1917.*)

Source.—L. 1886, ch. 332, § 1.

§ 361. **Objects of corporation.**—The objects of this corporation shall be to receive and take charge of such boys as may legally come into its custody and care, and to provide for their support, education and training. (*Former § 281, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 2.

§ 362. **Board of directors.**—The property and concerns of the corporation shall be managed by a board of twelve directors, who shall receive no compensation. The term of office of four of such directors shall expire on May first in each year, but they shall hold office until their successors are elected. The present board of directors is continued in office until their successors are chosen. (*Former § 282, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 3.

§ 363. **Election of directors.**—On the first day of May in each year, four directors shall be elected by the corporation in such manner and place as the by-laws shall direct, but if no election be held on any such day, the election may be held on any subsequent day, and any vacancies occurring otherwise than by the expiration of a regular term may be filled for the balance of such term in accordance with the by-laws of this corporation and by the votes of a majority of the directors then in office. (*Former § 283, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 4.

§ 364. **Quorum to do business.**—Five members of the board shall be a quorum, and the board may delegate its powers, during the interval between its meetings, to an executive committee of its own members, whose minutes shall be kept as provided by the by-laws, and shall be reported for approval to all stated meetings of the board; but no purchase or conveyance of real estate shall be made unless by the concurrence of a majority of the whole board. (*Former § 284, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 5.

§ 365. **Custody of boys, how acquired; notice to corporation.**—The corporation shall be deemed to have acquired lawful care and custody of any boy between the ages of six and sixteen years who shall have been surrendered to it by his parent or guardian; provided that such surrender is evidenced by a writing executed by such parent or guardian setting forth the name and age of the boy, the date of surrender, and the term for which such surrender is made, and expressly vesting in the corporation all the powers and control over the boy of which such parent or guardian was possessed; provided that no such surrender shall be made except upon five

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days' previous notice of the intention to make such surrender in writing, by the parent or guardian of the child to the said corporation or its agents. (*Former § 285, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 6, as amended by L. 1894, ch. 414.

§ 366. Commitments of boys by magistrates to care of corporation; effect of commitments.—Any justice of the peace, police justice, or other committing magistrate or officer, is hereby authorized to commit to said corporation, with its consent, any boys between the ages of six and sixteen years, deserting their homes without good or sufficient cause, or keeping company with dissolute or vicious persons against the lawful commands of their fathers, mothers, guardians or other persons standing in the place of a parent; or any such boys found wandering in the streets or lanes of any city or village, or in the highways of any town without guardianship, and practicing dissolute or vicious habits. Such commitment to said corporation shall be to the custody and control thereof until such boys are discharged therefrom by operation of law or by the said corporation; but such boys shall not in any event be detained by said corporation after they arrive at the age of twenty-one years. (*Former § 286, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 7, as amended by L. 1894, ch. 414.

§ 367. Truant homes and charitable institutions, transfer of certain boys by.—The corporate authorities of any truant school, or charitable institution now or hereafter having the lawful custody and care of any boy not less than six years of age, and not awaiting trial nor under sentence for a term of years for crime, may, with the consent of said corporation, transfer and assign such custody and care to this corporation upon such terms as the directors of such institution and said corporation may agree. (*Former § 287, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 8, as amended by L. 1894, ch. 414.

§ 368. Power of corporation as to boys in its care; corporation to act as guardian and enforce terms of indenture.—Said corporation shall have the custody and control of all boys surrendered, committed or transferred to it under sections three hundred and sixty-five to three hundred and sixty-seven of this article, and shall have authority by its officers or agents to restrain and direct them, to assign them to suitable employments, to determine their hours of labor, study and rest, to care for their sustenance and health, and to instruct them in useful knowledge; and shall have power to place such boys in suitable homes where they may be adopted into families or taken on trial or for a limited time; or, in its discretion, to return them to their former home or their parents or guardians, and may at its discretion bind out such boys as apprentices or servants during their minority or for any shorter time upon such terms or conditions as now are or hereafter shall be prescribed by law. And said corporation may, with the consent of

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any other charitable corporation authorized by law to take the custody and control of orphan, vagrant, destitute, abandoned or disorderly boys, transfer to such other corporation the custody and control of any boy whenever such transfer is deemed by said corporation to be necessary and proper for the welfare of such boy or for the discipline or protection of other boys in its charge, provided that there be first obtained from a judge of a court of record in the county where said corporation shall have its principal buildings, an order of approval of such transfer. The corporation shall be and remain the guardian of every boy bound by it to service, shall take care that the contract be fulfilled, and that any grievance be redressed as prescribed by law, and shall require, by the terms of every such indenture, a report from the master to whom such boy is bound, or his assignee, at least once in every six months, upon the occupation, health and conduct of the boy so bound. (*Former § 288, thus renumbered and amended by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 9, as amended by L. 1894, ch. 414.

§ 369. **Statements as to age.**—In all cases under this article where boys shall come under the care, custody or control of said corporation, the age of such boys shall, so far as said corporation is concerned, be prima facie deemed and taken to be correct as stated in the written surrender of the parent or guardian, or the order of commitment by the committing magistrate or officer, or in the transfer by the authorities of any truant school or charitable institution; and in case of any omission to state the age of any boy in any of such cases, the directors of said corporation shall, as soon as may be after such boy shall be received by them, ascertain his age by the best means in their power and cause the same to be entered in a book to be designated by them for the purpose. And the age of such boy thus ascertained shall be prima facie deemed and taken to be the true age of such boy, (*Former § 289, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 10.

§ 370. **Reports.**—The said corporation shall annually, on or before the fifteenth day of January, report to the legislature the number and names of the boys in its custody or under its guardianship, their age, residence, occupation, state of education, together with the changes in these particulars during the preceding year; the receipts and expenditures, and the financial condition of the corporation, and an account of its general operations. (*Former § 290, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 11.

§ 371. **Property exempt from taxation.**—So long as the property of said corporation shall be used for charitable purposes only, such property, both real and personal, shall be exempt from taxation. (*Former § 291, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1886, ch. 332, § 12.

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§ 372. Powers and liabilities.—Said corporation shall possess the general powers and be subject to the general restrictions and liabilities of incorporated charitable institutions. (*Renumbered by L. 1909, ch. 258, and amended by L. 1910, ch. 449.*)

Source.—L. 1886, ch. 332, § 13.

ARTICLE XX.

[Former article 17, thus renumbered and amended by L. 1909, ch. 258.]

SHELTER FOR UNPROTECTED GIRLS.

- Section 380. Authority to receive girls.
 381. Commitments to.
 382. Warrant of commitment.
 383. Refusal to receive girls.
 384. Custody of girl surrendered by parent.
 385. Transfers from charitable institutions.
 386. Statements as to age.
 387. Support of inmates.
 388. Visitations.
 389. Arrest after condition discharge.
 390. Commitments not affected by change of name.
 391. Legacies and devises.

§ 380. Authority to receive girls.—“The shelter for unprotected girls” at Syracuse, is hereby authorized to receive, and have the custody of all girls committed, surrendered or transferred to it under the provisions of this article, and shall have authority by officers or agents to restrain or direct them; to keep such girls at such employments, and to cause them to be instructed in such branches of useful knowledge as shall be suitable for their years and capacities; to determine their hours of labor, study and rest; to care for their sustenance and health and to have general control over them. (*Former § 300, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 6, as added by L. 1887, ch. 413, amended by L. 1893, ch. 53, § 6.

§ 381. Commitments to.—Any female child of Protestant faith or parentage under the age of sixteen years duly convicted of juvenile delinquency or under any of the provisions of sections four hundred and eighty-five and four hundred and eighty-six of the penal law by and before any court, justice or other committing magistrate having jurisdiction thereof in the fifth, sixth, seventh or eighth judicial district of this state, may be committed to “The Shelter for Unprotected Girls,” now existing in the city of Syracuse, which institution is hereby authorized to receive and hold female children so committed. Whenever any female of Protestant faith or parentage over the age of sixteen years and under the age of eighteen years shall be brought or shall voluntarily come before a committing magis-

trate or justice of any court having jurisdiction in the fifth, sixth, seventh or eighth judicial district of this state, and it shall be proved by the confession of such female or by testimony that such female is either found in a reputed house of prostitution or assignation, or in company with or frequenting the company or thieves or prostitutes, or is found associating with disorderly persons, or is wilfully disobedient to parents or guardians and is in danger of becoming by reason thereof criminal or disorderly, or is found from vicious habits and associations to be in danger of becoming immoral, criminal or disorderly or a prostitute, or is of intemperate habits, or shall have been convicted by such court or official of vagrancy, petit larceny or of any misdemeanor and is not insane or mentally or physically incapable of being substantially benefited by the discipline of such institution, such justice, magistrate or court is authorized to commit such female to "The Shelter for Unprotected Girls" at Syracuse, and such institution is hereby authorized to receive and hold such females so committed. Any female so committed shall be committed to the custody and control of such corporation until such female is discharged therefrom by the vote of a majority of the trustees of such corporation, but such inmate shall not, in any event, or under any of the provisions of this article, be detained by such corporation after she shall have arrived at the age of twenty-one years. (*Former § 301, thus renumbered by L. 1909, ch. 258, and amended by L. 1914, ch. 166.*)

Source.—L. 1881, ch. 278, § 1, as amended by L. 1887, ch. 413; L. 1893, ch. 58; L. 1899, ch. 272, § 1.

References.—See notes under State Charities Law, § 226, and Penal Law, § 2187.

§ 382. Warrant of commitment.—Such police justice, justice of the peace or other committing magistrate or court, upon such commitment or conviction, shall issue in duplicate a warrant to some police officer or constable of the county or city where the commitment or conviction occurs, authorizing such officer or constable to take in charge the person named in the warrant and to convey her to said institution. The receipt of such person at said institution shall be duly indorsed upon said warrant by the matron or other person in charge thereof, which warrant so indorsed shall be returned to said police justice, justice of the peace or other committing magistrate or court, and shall by him or it be filed in the office of the clerk of the county from which said person shall have been committed, and such warrant shall be sufficient and competent authority for the officers of said institution to keep and detain the person therein named. A duplicate of such warrant, with a copy of the indorsement made upon the warrant so returned, shall be delivered to the matron or other officer in charge of such institution and shall be retained by such institution, and a substantial transcript of the statement of facts recited therein and thereon shall be recorded, or caused to be recorded, by such matron or other officer aforesaid, in a suitable book to

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be kept for that purpose, which book shall at all reasonable hours of the day be subject to the inspection of any person. (*Former § 302, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 2, as amended by L. 1887, ch. 413; L. 1893, ch. 53, § 2.

§ 383. Refusal to receive girls.—Within five days after the receipt of any girl committed as aforesaid to the said institution, the board of trustees, or the president or vice-president thereof may, for good cause, refuse to receive at said institution the girl so committed thereto. In case of such refusal, the same shall be indorsed upon the duplicate of the warrant delivered, as above provided, to the matron or other officer of said institution, and the said duplicate warrant so indorsed shall be returned to the police justice, justice of the peace or other committing magistrate or court that may have issued the same. Upon receiving such refusal, such police justice, justice of the peace, or other committing magistrate or court, shall issue to some police officer or constable a warrant requiring the said officer or constable to take the girl, so refused admission, from the institution, and to bring her before him or it, whereupon the said police justice, justice of the peace, or other committing magistrate or court, shall proceed to sentence or commit such girl so brought before him or it, in the same manner and with the same force and effect as if she had never been committed to such institution. (*Former § 303, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 3, as amended by L. 1887, ch. 413; L. 1893, ch. 53, § 3.

§ 384. Custody of girl surrendered by parent.—The said corporation shall be deemed to have acquired lawful care and custody of any girl between the ages of seven and eighteen years, who shall have been surrendered to it by her parents, or her parent if but one be living, provided that such surrender is evidenced by a writing executed by such parents or parent, setting forth the age and name of the said girl, the date of surrender, the term for which such surrender is made, and expressly vesting in such corporation all the power and control over the girl possessed by such parents or parent, and which writing shall contain an affidavit made by the parents or parent stating that the statements contained therein are true. (*Former § 304, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 4, as amended by L. 1887, ch. 413; L. 1893, ch. 53, § 4; L. 1899, ch. 278, § 2.

§ 385. Transfers from charitable institutions.—The corporate authorities of any charitable institution located within the fifth, sixth, seventh or eighth judicial district of this state, now or hereafter having the lawful care or custody of any girl not less than seven years of age, not awaiting trial nor under sentence, for a term of years, for crime, may, with the consent of said corporation, transfer and assign such custody

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and care to said corporation, upon such terms as the directors of such institution and said corporation may agree upon; but such transfer and assignment shall be evidenced by a writing officially executed by such institution, and shall be made only on the approval thereof by the county judge of the county in which such institution is situated, indorsed on said writing. (*Former § 305, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 5, as added by L. 1887, ch. 413, amended by L. 1893, ch. 53, § 5.

§ 386. **Statements as to age.**—In all cases under this article where any girl shall come under the care, custody or control of said corporation, the age of such girl shall, so far as said corporation is concerned, be prima facie deemed and taken to be correct as stated in the written surrender of the parents or parent, or the order of commitment by the committing magistrate, court or officer, or in the transfer by the authorities of any charitable institution; and in case of any omission to state the age of any girl in any such cases, the trustees of said corporation shall, as soon as may be after such girl may be received by them, ascertain her age by the best means in their power, and cause the same to be entered in the book to be designated by them for the purpose; and the age of such girl thus ascertained shall be prima facie deemed and taken to be the true age of such girl. (*Former § 306, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 7, as added by L. 1887, ch. 413, amended by L. 1893, ch. 53, § 7.

§ 387. **Support of inmates.**—Each board of supervisors of the several counties within the fifth, sixth, seventh and eighth judicial districts of this state is hereby authorized and directed to audit the bills for boarding any inmate of said institution received therein from the county of such board by virtue of any of the provisions of section three hundred and eighty-one, at such prices as such board of supervisors may deem just and reasonable, and the bills so audited shall be paid by the county treasurer of such county. When any such bill is so audited and paid, it shall be apportioned by said board among the various cities and towns in such county as said board shall deem equitable, and the amount so apportioned to any city or town shall be reimbursed by such city or town to such county. (*Former § 307, thus renumbered and amended by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 8, as added by L. 1887, ch. 413, amended by L. 1893, ch. 53, § 8.

§ 388. **Visitations.**—The said institution shall be subject to the same visitations, inspection and supervision as are now provided by law for the jails, penitentiaries and prisons of this state. (*Former § 308, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 9, as added by L. 1887, ch. 413, § 1.

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§ 389. **Arrest after conditional discharge.**—Any person having been conditionally discharged from said institution may, upon the violation of the condition of discharge, be arrested and returned thereto upon a warrant issued by order of the board of trustees of said institution, signed by the secretary and attested by the president thereof, which warrant shall briefly state the reasons for such arrest, and shall be directed and delivered to some officer or agent employed by the board of trustees to convey to said institution persons committed thereto, and when so signed, attested and delivered, may be executed by such officer or agent in any county of this state. But such warrant, before being so executed, must be indorsed by a magistrate of the city, town or county in which the person sought to be arrested may be found. (*Former § 309, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 14, as added by L. 1893, ch. 53, 10, amended by L. 1893, ch. 355.

§ 390. **Commitments not affected by change of name.**—The change of name shall not be held to affect or impair any commitment, transfer or surrender heretofore made, to "The shelter for homeless women in Syracuse, New York," but any girl so committed, transferred or surrendered may be received by "The shelter for unprotected girls." and shall remain in the care, custody and control of said institution in the same manner as if the commitment, transfer or surrender had been made to said institution under the name herein conferred upon it. (*Former § 310, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 12, as added by L. 1893, ch. 53, § 10.

§ 391. **Legacies and devises.**—No legacy or devise to "The shelter for homeless women in Syracuse, New York," in any will admitted to probate after February twenty-second, eighteen hundred and ninety-three, and no gifts made to "The shelter for homeless women in Syracuse, New York," after February twenty-second, eighteen hundred and ninety-three, shall fail or abate, or become inoperative by reason of the change of name, but "The shelter for unprotected girls" shall take and enjoy such legacy, devise or gift as if the same were made to such corporation under the name herein conferred upon it. (*Former § 311, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1881, ch. 278, § 13, as added by L. 1893, ch. 53, § 10.

ARTICLE XXI.

[Former article 15, thus renumbered by L. 1909, ch. 258.]

ANCHORAGE AT ELMIRA.

Section 400. By-laws.

401. Approval by state board of charities; certificate.

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- 402. Filing of by-laws and certificate.
- 403. Inspection by state board of charities.
- 404. Commitments by recorder of Elmira.
- 405. Commitments from other counties.
- 406. Limitation of term.
- 407. Support of inmates.
- 408. Change of by-laws; disposition of inmates on adverse certificate.
- 409. Detentions and rearrests in cases of escape.
- 410. Conveyance of women committed.
- 411. Who may rearrest.
- 412. Conditional discharge.
- 413. Rearrest after condition discharge.
- 414. Papers furnished by committing magistrate.
- 415. Determination as to age.
- 416. Removal and resentence of insubordinate inmates.
- 417. Disposition of children of women so committed.
- 418. Powers of superintendent.
- 419. Freedom of worship.

§ 400. **By-laws.**—The Anchorage, a corporation created under the general laws of this state for the promotion of Christian work and the improvement of the spiritual and moral condition of women who shall come under its care, and having its location in the city of Elmira, may make by-laws not inconsistent with law, providing for its custody, with or without confinement in its buildings in such city, of women committed to it in pursuance of this article; for the proper care and maintenance, the disciplinary and reformative treatment and probationary release on parole of such women while so in its custody; and for such administration of its affairs, as to its trustees may seem desirable, by an executive committee to be composed of at least five of its trustees. (*Former § 250, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 1.

§ 401. **Approval by state board of charities; certificate.**—The by-laws of such corporation may be submitted to the state board of charities for approval. The state board of charities may make and annex to a copy of such by-laws its certificate in writing, dated the day when made, to the effect that it approves such by-laws and that one or more members of such board within thirty days before the date of such certificate personally inspected the buildings and management of such corporation and that such board is satisfied that such corporation is properly prepared to and will for at least one year thereafter receive into its custody and properly care for women committed to it in pursuance of this article. (*Former § 251, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 2.

§ 402. **Filing of by-laws and certificate.**—Such copy of the by-laws of said corporation and certificate of the state board of charities annexed

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thereto may, within one year after the date of such certificate, be filed and recorded in the clerk's office of the county of Chemung and a copy of such by-laws and certificate duly certified by the clerk of Chemung county may be filed and recorded in the clerk's office of each of the counties of Steuben, Schuyler, Tompkins and Tioga. (*Former § 252, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 3.

§ 403. **Inspection by state board of charities.**—If the state board of charities shall make such certificate and any women shall be committed to the Anchorage in pursuance of this article, one or more of the members of such board shall, so long as any women so committed shall remain in the custody thereof, annually within sixty days before the expiration of each year after the date of such certificate, personally inspect the buildings and management of such corporation; and such board shall after such inspection make a certificate in writing dated as of the day upon which it is made either substantially to the same effect as the first certificate or substantially to the contrary effect; and the certificate so made shall be filed by such board in each county clerk's office in which the certificate of the last previous year shall have been filed. And after the filing of such certificate substantially contrary to such first certificate no commitments shall be made to the Anchorage by virtue of this article. (*Former § 253, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 4.

§ 404. **Commitments by recorder of Elmira.**—During the period of one year after the date of the first certificate of the state board of charities filed in the clerk's office of Chemung county and during each year after the date of the filing of each subsequent certificate of the state board of charities substantially to the same effect as the first certificate, the recorder of the city of Elmira shall commit any woman between sixteen and thirty years of age convicted by him or by the court of special sessions held by him of being a prostitute or of frequenting any house of ill-fame, or of disorderly conduct or of being a disorderly person, for the first offense; and may commit any woman actually or apparently under twenty years of age, convicted by the court of special sessions held by such recorder of any misdemeanor, to the Anchorage, to be there detained subject to its by-laws so approved by the state board of charities and filed. (*Former § 254, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 5.

§ 405. **Commitments from other counties.**—Any magistrate in any other county in which a certified copy of such first certificate of the state board of charities is authorized to be filed may, if a certified copy of such first certificate or of any subsequent certificate of the state board of charities to the same effect shall be filed in such county during the period of

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one year after the date of any such certificate, commit any woman between sixteen and thirty years of age convicted by such magistrate or by a court of special sessions held by such magistrate of prostitution or of frequenting any house of ill-fame, or of disorderly conduct or of being a disorderly person for the first offense; and any woman actually or apparently under twenty-one years of age; and any woman convicted by the court of special sessions held by such magistrate of a misdemeanor, to the Anchorage to be there detained subject to the rules and regulations of the state board of charities. (*Former § 255, thus amended by L. 1909, ch. 240, § 74, in effect April 22, 1909, and renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 6.

§ 406. **Limitation of term.**—No person committed to the Anchorage in pursuance of this article shall be deprived of her liberty by virtue of such commitment for a longer period than such person might have been committed to a county jail upon conviction of the offense of which the conviction was had by virtue of which the commitment was made. (*Former § 256, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 7.

§ 407. **Support of inmates.**—The board of supervisors of any county from which commitments are authorized to be made to the Anchorage by virtue of this article may contract with the Anchorage for the support of women committed to the Anchorage from such county and the amount payable to the Anchorage in pursuance of such contract shall be a county charge upon such county. (*Former § 257, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 8.

§ 408. **Change of by-laws; disposition of inmates on adverse certificate.**—After the state board of charities shall have approved the by-laws of the Anchorage, such by-laws shall not thereafter be changed except with the approval of such board. If the state board of charities shall at any time make a certificate substantially contrary to the effect of such first certificate made by it, such board of charities shall immediately thereupon cause each woman then in the custody of the Anchorage by virtue of this article to be taken before a magistrate or a court of special sessions of the town, city or village from which such woman was committed, and such magistrate or court may thereupon discharge such woman from such commitment or may recommit such woman to the county jail of the county for a period which together with the period since the date of the first commitment shall not exceed the total period for which such woman might have been committed to jail upon her original conviction by virtue of which her commitment to the Anchorage was made. (*Former § 258, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 9.

§ 409. **Detentions and rearrests in cases of escape.**—The executive committee of said Anchorage shall have power to cause to be detained therein, under such proper rules and regulations as the board of trustees shall provide, any female so committed thereto according to the terms of said sentence and commitment, and to cause the rearrest in any county of this state, and return to said Anchorage, of any person who may have escaped therefrom or been conditionally discharged therefrom, as herein provided, and in case of such rearrest and return, to detain her as aforesaid from the time of such return, for a time equal to the unexpired portion of her time at the time of her escape or conditional discharge. (*Former § 259, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 10.

§ 410. **Conveyance of women committed.**—The executive committee shall employ suitable persons to convey from the place of conviction to the said Anchorage all women duly committed thereto, and said persons shall have the power and authority of deputy sheriffs. All expenses of such conveying shall be paid by the treasurer of the board of said Anchorage. (*Former § 260, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 11.

§ 411. **Who may rearrest.**—In any case of the escape of any inmate from said Anchorage, any person duly employed by said executive committee to convey to said Anchorage women committed thereto, shall have power to arrest such escaped inmate in any county in this state without a warrant, and forthwith to convey her to said Anchorage; and any magistrate shall have power to cause any such escaped inmate to be arrested and held in custody until she can be removed to said Anchorage, as in case of her first commitment thereto. (*Former § 261, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 12.

§ 412. **Conditional discharge.**—Any person committed to the Anchorage may be discharged therefrom conditionally or otherwise in the discretion of the executive committee, whenever in the judgment of said committee there is satisfactory evidence of the reformation of such person, provided that in no case of sentence for a certain definite period shall commutation or abridgment of sentence be made for more than one-third of the period specified in the warrant of commitment without the concurrence in writing of the committing magistrate, or of his successor in office. (*Former § 262, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 13.

§ 413. **Rearrest after conditional discharge.**—Any person having been conditionally discharged from said Anchorage may be arrested and returned thereto upon the warrant of the executive committee of said Anchorage, issued by order of said committee, signed and attested by the

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chairman of said committee, which warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to any person employed by said executive committee to convey to said Anchorage persons committed thereto, and when so signed, attested and delivered may be executed by such person in any county of this state. (*Former § 263, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 14.

§ 414. **Papers furnished by committing magistrate.**—It shall be the duty of every justice of the peace, police justice or other magistrate or court committing any woman under authority given by this article immediately to notify the superintendent of said Anchorage of such conviction, and to cause a record to be kept of the name, age, birthplace, occupation, previous commitment, if any, and for what offenses (and last place of residence of such woman or women) so committed by them together with the particulars of the offense charged. A copy of said record shall be transmitted with the warrant of commitment to the superintendent of said Anchorage, who shall enter and keep in a book or record all these and such other facts as are by law required concerning inmates of poor-houses. (*Former § 264, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 15.

§ 415. **Determination as to age.**—Any court or magistrate authorized to commit any female to said Anchorage shall before so committing her inquire into and for the purpose of the case determine the age of such female at the time of such commitment, and her age as so determined shall be stated in the warrant; and when the year only is stated, it shall be considered as expiring on the day on which the warrant is dated and the statement of age of such female so made in said warrant of commitment shall be conclusive evidence as to the age of said female in any action to recover damages for her detention or imprisonment under said warrant, and shall be presumptive evidence of the age of such female in any other inquiry, action or proceeding relating to such detention. (*Former § 265, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 16.

§ 416. **Removal and resentence of insubordinate inmates.**—Whenever any person committed to such institution by a magistrate, court or justice of the peace, as provided in this article, shall by reason of insubordination or other improper conduct, prove, in the judgment of the executive committee of said institution, to be an improper subject for care in said Anchorage, it shall be the duty of the executive committee of said Anchorage thereupon to cause the return of such female to the county from which she was committed in the custody of one of the persons employed by said executive committee to convey to said Anchorage women committed thereto, who shall deliver her into the custody of the sheriff of such county, to

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be by said sheriff taken before the court or magistrate which committed her to said Anchorage, or some other court or magistrate having equal jurisdiction in such county, to be by such court or magistrate resentence for the offense for which she was committed to said Anchorage, and dealt with in all respects as though she had not been committed to said Anchorage, and in such case all costs and expenses incurred and paid by said board of trustees on account of such female so returned shall be a county charge upon such county to be levied and collected as other taxes in said county and paid over to said board of trustees and credited to the account to which such expenses were charged. (*Former § 266, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 17.

§ 417. **Disposition of children of women so committed.**—In case any woman committed to said Anchorage at the time of such commitment shall be the mother of a nursing child in her care under one year of age, or be pregnant with child which shall be born after such commitment, such child may accompany its mother and remain in said Anchorage until such time as in the opinion of the board of trustees such child can properly be removed therefrom and suitably provided for elsewhere. (*Former § 267, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 18.

§ 418. **Powers of superintendent.**—For the safe management and discipline of said Anchorage the superintendent thereof is hereby given and is required to exercise, in regard to women committed to said Anchorage, the same power as jail keepers and constables have in regard to persons committed or held in custody of said officers. (*Former § 268, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 19.

§ 419. **Freedom of worship.**—Nothing herein contained shall interfere with the right of the freedom of worship of any inmate confined within said institution, as provided by the constitution of the state of New York. (*Former § 269, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1892, ch. 227, § 20.

ARTICLE XXII.

GENERAL PROVISIONS APPLICABLE TO CHARITABLE INSTITUTIONS.

Section 450. Reports to supervisors of appointments and committals to charitable institutions.

451. Reports by officers of certain institutions to clerks of supervisors and cities.

452. Verified accounts against counties, cities and towns.

453. Dutchess county.

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- 454. Construction of last section.
- 455. Female attendants for feeble-minded women in transit to or from institutions.
- 456. Investigation of complaints by boards of managers.
- 457. Fees of witnesses.
- 458. Designation of depository of funds.
- 459. Labor of children not to be hired out.
- 460. Commitments to institutions.
- 461. Commitments of feeble-minded.

§ 450. Reports to supervisors of appointments and committals to charitable institutions.—Every judge, justice, superintendent or overseer of the poor, supervisor or other person who is authorized by law to make appointments or commitments to any state charitable institution, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which is liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or committed and the length of time of such appointment or commitment. This and the two following sections shall apply to each of the asylums, reformatories, homes, retreats, penitentiaries, jails or other institutions, except alms-houses, in each of the counties of this state, except the county of Kings, in which the board, instruction, care or clothing of persons committed thereto is, or shall be, a charge against any county or town therein. (*Former § 380, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 51, as amended and renumbered by L. 1892, ch. 252; L. 1880, ch. 347; L. 1881, ch. 273; originally revised from L. 1880, ch. 347, §§ 1, 2, 8, 9.

Consolidators' note.—This and the two following sections were originally revised from L. 1880, ch. 347, as amended by L. 1881, ch. 273, but only so far as they related to state charitable institutions, and those acts were allowed to remain unrepealed. As this law includes institutions which receive public moneys and are under the supervision of the state board of charity, other than state institutions, we include those acts in this section. The words "penitentiaries" and "jails" are retained, although it would seem that any provisions of law relating to them should be placed in Prison Law, because they are, with other institutions, denominated "state benevolent institutions" in L. 1880, ch. 347, § 1.

§ 451. Reports by officers of certain institutions to clerks of supervisors and cities.—The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to which any person is committed or appointed, whose board, care, instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person therein. Such report shall state when such

§§ 452, 453. Provisions applicable to charitable institutions. L. 1909, ch. 56.

person was received into the institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge. (*Former § 381, thus re-numbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 52, as amended and re-numbered by L. 1902, ch. 252; originally revised from L. 1880, ch. 347, §§ 3, 4.

§ 452. **Verified accounts against counties, cities and towns.**—The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of a city from which any such person is committed or appointed, a verified report and statement of the account of such institution with such county, town or city, up to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the sum per week or per annum charged, and if no part of such account has been paid, the report shall show such fact. Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby. The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county on the second day of the annual meeting of the board next after the receipt of the same. (*Former § 382, thus renumbered by L. 1909, ch. 258.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 53, as amended and re-numbered by L. 1902, ch. 252; originally revised from L. 1880, ch. 347, §§ 5, 6, 7.

Effect.—This section does not repeal §§ 70 and 110, and is not in conflict therewith. Rept. of Atty. Genl. (1911) 62.

§ 453. **Dutchess county.**—All insane, idiotic, blind and deaf and dumb persons, the expense of whose support and maintenance now is, or, under the laws of the state of New York, may become a charge upon the city of Poughkeepsie, or the county of Dutchess, exclusive of said city, or both, and who are maintained, or shall be maintained, in any of the institutions of the state of New York, shall be supported by said county of

L. 1909, ch. 56. Provisions applicable to charitable institutions. §§ 454-456.

Dutchess as one district. All institutions in the state of New York maintaining any such person whose support is properly chargeable, or shall be properly chargeable, to said city or county, are hereby required to render to the county treasurer of said county all bills for the support of such persons without any distinction between those persons from the different parts of said county. (*Former § 383, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1887, ch. 472, §§ 1, 2.

§ 454. Construction of last section.—The last section shall not be held to affect chapter two hundred and eighty-six of the laws of eighteen hundred and sixty-three, an act for the better support of the poor in the city of Poughkeepsie, except as to the class of persons herein named. (*Former § 384, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1887, ch. 472, § 3.

§ 455. Female attendants for feeble-minded women in transit to or from institutions.—In every order, commitment or direction made by any court, judge or other officer for the confinement of a feeble-minded woman in any public institution or other place, not located at the same place where such feeble-minded person may be at the time such order, commitment or direction is made, such court, judge or other officer shall also direct therein that such feeble-minded woman shall have as an attendant at least one suitable adult woman, while in custody pursuant to such order, commitment or direction, and while going to such public institution or other place; and no officer or other person shall keep in his custody, or take to any public institution or other place for the custody or confinement of a feeble-minded person, any feeble-minded woman unless accompanied by such an attendant. Whenever any feeble-minded woman confined in any institution of this state, under and pursuant to a commitment or order of any court, judge or other officer, is to be transferred from one institution to another institution, or from any public institution to a point outside of the city, village or town where said public institution is located, the board of managers of the institution where said feeble-minded woman is confined shall cause said feeble-minded woman, when so removed and transported, to be accompanied by one or more females in addition to the officer having her in charge. The expenses of procuring female assistants required for carrying out the provisions of this section shall be a charge upon the city or county from which said feeble-minded woman was committed. (*Former § 385, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1890, ch. 40, §§ 1-3, so far as the same relates to feeble-minded women.

§ 456. Investigation of complaints by boards of managers.—Whenever the managers, directors or trustees of any asylum, hospital or other chari-

§§ 457-459. Provisions applicable to charitable institutions. L. 1909, ch. 56.

table institution, the managers, directors or trustees of which are appointed by the governor and senate, or by the legislature, shall deem it necessary or proper to investigate and ascertain the truth of any charge or complaint made or circulated respecting the conduct of the superintendent, assistants, subordinate officers or servants, in whatever capacity or duty employed by or under the official control of any such managers, directors or trustees, it shall be lawful for the presiding officer for the time being of any such managers, directors or trustees, to administer oaths to all witnesses coming before them respectively for examination, and to issue compulsory process for the attendance of any witness within the state whom they may respectively desire to examine, and for the production of all papers that any such witness may possess, or have in his power, touching the matter of such complaint or investigation; and wilful false swearing by any witness who may be so examined is hereby declared to be perjury. (*Former § 386, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1871, ch. 699, § 1.

References.—Administering oaths to witnesses, Code Civ. Pro. § 843; power to compel attendance and testimony of witnesses, Id. §§ 854-859.

§ 457. **Fees of witnesses.**—All persons examined as witnesses under the preceding section shall be paid the same fees as are now paid to witnesses in the supreme court by the said managers, directors or trustees, authorizing the issuing of such compulsory process. (*Former § 387, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1871, ch. 699, § 2.

§ 458. **Designation of depository of funds.**—It shall be the duty of the board of trustees or managers of each charitable or benevolent institution in this state, supported in whole or in part by moneys received from the state, or by any county, city or town thereof, to designate by resolution, to be entered upon their minutes, some duly incorporated national or state bank or trust company as the depository of the funds of such institution. After such designation, it shall be the duty of the treasurer of each such charitable or benevolent institution immediately to deposit in the bank or trust company so designated, in his name as treasurer of the institution, naming it, all funds of the institution which may come into his possession. (*Former § 388, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1884, ch. 415, §§ 1, 2.

References.—Deposit of state funds by charitable institutions, State Finance Law, § 11; by state institutions, Id. § 19. Monthly statements of balances, Id. § 9. Deposits regulated, Id. § 8.

§ 459. **Labor of children not to be hired out.**—It shall be unlawful for the trustees or managers of any house of refuge, reformatory or other correctional institution, to contract, hire, or let by the day, week or month, or any longer period, the services or labor of any child or children under,

L. 1909, ch. 56. Provisions applicable to charitable institutions. §§ 460, 461.

now or hereafter committed to or inmates of such institution. (*Former § 389, thus renumbered by L. 1909, ch. 258.*)

Source.—L. 1884, ch. 470, § 1.

§ 460. **Commitments to institutions.**—Whenever the board of managers or superintendent of any public charitable or custodial asylum or institution for the feeble-minded, idiots or epileptics, shall decide that it is for the best interests of the individual as well as of the state that any inmate of such institution should be longer retained therein, such official or board may apply to the judge of a court of record in the district in which the institution is located for the commitment of such individual to such institution. Such application having been made it shall be the duty of the judge of such court to name a day for a hearing on such application, and if after due notice to the parents or guardians, and full opportunity has been given for the presentation of evidence by all parties in interest, the judge shall concur in the opinion, he may commit such individual to the care and custody of such institution, and such person shall be detained therein until discharged by direction of the board of managers thereof, using such form of commitment as may be approved for the use of the various institutions by the state board of charities. Where it becomes necessary to have appointed a committee of a feeble-minded or epileptic incompetent person to legally settle an estate in which such incompetent feeble-minded or epileptic person has a legal or financial interest or for any other purpose the superintendent of the asylum or institution in which such incompetent person is confined or cared for is hereby empowered to make application to a court of competent jurisdiction for the appointment of such committee. (*Added by L. 1914, ch. 405.*)

§ 461. **Commitments of feeble-minded.**—It shall be the duty of a judge of a court of record, on application of a parent, guardian, friend or relative, or of any poor law official, or of any probation or parole officer, or of any superintendent or principal of schools, to set a date for a hearing for the determination of the mental status of any alleged feeble-minded person. Due notice shall be given to parties at interest as to the hearing, the date thereof, and full opportunity shall be given for a presentation of evidence concerning the mental status of the alleged feeble-minded person. When it shall appear to the satisfaction of the court that the individual named in the application is feeble-minded and that it is for the best interests of the individual and of the community that he be committed to a public institution for the feeble-minded, the judge may commit such feeble-minded person to such institution, using such form of commitment as shall be prescribed by the state board of charities, and such person shall be detained therein until duly discharged by direction of the board of managers thereof.

Every application for commitment shall be accompanied by the certificate of two medical practitioners, certifying that the person to whom the application relates has been examined by each of them as to his mental capacity

§§ 470, 471.

Laws repealed.

L. 1909, ch. 56.

and that in their opinion the person is feeble-minded. (*Added by L. 1914, ch. 361.*)

ARTICLE XXIII.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 470. Laws repealed.

471. When to take effect.

§ 470. *Laws repealed.*—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (*Former § 400, thus renumbered by L. 1909, ch. 258, in effect April 27, 1909.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 170.

§ 471. *When to take effect.*—This chapter shall take effect immediately. (*Former § 401, thus renumbered by L. 1909, ch. 258, in effect April 27, 1909.*)

Source.—Former State Charities L. (L. 1896, ch. 546) § 171.

SCHEDULE OF LAWS REPEALED.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1846	143	All	1880	549	1,
1850	24	All			part relating to residence required for
1850	304	All			admission to asylum for the idiotic
1851	502	All	1881	187	All
1852	387	All	1881	273	All
1853	159	All	1881	278	All
1853	608	All	1881	323	All
1855	163	All	1884	314	All
1859	129	All	1884	415	All
1859	381	All	1884	470	All
1861	65	All	1885	42	All
1861	306	All	1885	281	All
1862	220	All	1886	332	All
1863	224	All	1886	539	All
1865	172	3-7	1887	17	All
1866	673	All	1887	413	All
1867	255	All	1887	472	All
1867	739	All	1888	404	All
1867	951	All	1890	40	All
1869	285	All	1890	238	All
1871	699	All	1891	51	All
1873	359	All	1891	216	All
1873	571	All	1891	375	All
1873	625	All	1892	227	All
1874	489	All	1892	341	All
1875	228	All	1892	467	All
1875	536	All	1892	637	All
1875	634	1, ¶ 110	1892	704	All
1876	54	All	1893	53	All
1878	72	All	1893	348	All
1878	384	All	1893	355	All
1879	109	All	1893	470	All
1879	272	1,	1893	635	All
		part relating to residence required	1894	363	All
		for admission to asylum for the idiotic	1894	382	All
1880	347	All	1894	414	All

L. 1909, ch. 56.

Consolidators' notes.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1894	468	All	1901	38	All
1895	13	All	1901	421	All
1895	38	1-8, 10	1902	108	All
1895	59	All	1902	252	All
1895	253	All	1902	356	All
1895	439	All	1903	473	All
1895	771	All	1904	165	All
1895	877	All	1904	167	All
1896	242	All	1904	169	All
1896	405	All	1904	221	All
1896	546	All	1904	453	All
1896	587	All	1904	462	All
1896	914	All	1904	545	All
1896	948	1,	1905	452	All
part beginning "The superintendent and managing officers" and ending "as the comptroller shall direct"			1905	457	All
1897	47	All	1905	458	All
1897	437	All	1905	459	All
1898	264	All	1905	613	All
1898	359	All	1906	225	All
1898	536	All	1906	376	All
1899	246	All	1906	451	All
1899	272	All	1906	685	All
1899	368	All	1907	283	All
1899	436	All	1907	380	All
1899	504	All	1907	597	All
1899	632	All	1908	24	All
1900	49	All	1908	54	All
1900	369	All	1908	97	All
1900	416	All	1908	240	All
1900	769	All	1908	360	All
			1908	433	All

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

Statutes repealed which are temporary or obsolete or which have been consolidated in the "Consolidated Laws" are given with an explanatory note as follows:

L. 1859, ch. 129.—Provides that the superintendent of public instruction shall be a trustee of the state asylum for idiots. Substance contained in § 60 of State Charities Law. Superseded and obsolete.

L. 1859, ch. 381.—Act relating to State Inebriate Asylum. The institution was abolished by L. 1879, ch. 280, § 1. Obsolete.

L. 1861, ch. 65.—Act relating to State Inebriate Asylum. See Note 22.

L. 1863, ch. 224.—An act for the relief of sick and wounded soldiers. Temporary and obsolete.

L. 1865, ch. 172, §§ 3-7.—Amends act to incorporate the society for the reformation of juvenile delinquents. The provisions of §§ 3 and 4 are covered and superseded by § 124 of the State Charities Law, § 184, this law. Obsolete. Sections 5-7 consolidated in State Charities Law, §§ 186-188.

L. 1866, ch. 673.—Provides for policemen for the State Inebriate Asylum, which institution was abolished by L. 1879, ch. 280, § 1. Obsolete.

L. 1867, ch. 255.—Act for the relief of honorably discharged soldiers. Temporary and now obsolete.

L. 1869, ch. 285.—Consolidated in State Charities Law, §§ 193-195.

L. 1871, ch. 699.—Sections 1, 2 consolidated in State Charities Law, §§ 386, 387. Section 3 repealed by L. 1881, ch. 593, § 1.

L. 1873, ch. 359.—Act relating to juvenile delinquents in the city of New York. The provisions of §§ 1-3 are covered by § 128 of State Charities Law; § 197, this law. Superseded and obsolete. Section 4 consolidated in State Charities Law, § 189. Section 5 states when act shall take effect.

L. 1873, ch. 625.—Act relating to New York State Inebriate Asylum. Institution abolished by L. 1879, ch. 280, § 1. Obsolete.

L. 1876, ch. 54.—Act requiring officers of state benevolent institutions to report yearly. Substance covered by § 53 of State Charities Law; § 382, this law. Superseded and obsolete.

L. 1878, ch. 384.—Consolidated in State Charities Law, § 190.

- L. 1880, ch. 347.—Consolidated in State Charities Law, § 380.
- L. 1880, ch. 549, § 1, pt.—Requires residence of one year to authorize admission of poor person to asylum for the idiotic. Substance is covered by § 16 of State Charities Law; § 17, this law. Superseded and obsolete.
- L. 1881, ch. 273.—Amends L. 1880, ch. 347, § 5. Consolidated in State Charities Law, § 380.
- L. 1884, ch. 314.—Act making appropriation for establishment of a house of refuge for women. Section 4 amended to read as follows by L. 1885, ch. 42, § 1. Rest of act temporary and obsolete.
- L. 1884, ch. 415.—Consolidated in State Charities Law, § 388.
- L. 1884, ch. 470.—Consolidated in State Charities Law, § 389.
- L. 1886, ch. 332.—Sections 1-5, 10-13 consolidated in State Charities Law, §§ 280-284, 289-292. Sections 6-9, amended to read as follows by L. 1894, ch. 414, §§ 1-4. Section 14 states when act shall take effect.
- L. 1887, ch. 17.—Sections 1, 2 amended to read as follows by L. 1892, ch. 704, §§ 3, 5. Section 3 consolidated in State Charities Law, § 212. Section 4 states when act shall take effect.
- L. 1887, ch. 413, § 1, pt., adding § 9 to L. 1881, ch. 278, consolidated in State Charities Law, § 308. Rest of section amended to read as follows by L. 1893, ch. 53. Section 2 states when act shall take effect.
- L. 1887, ch. 472.—Consolidated in State Charities Law, §§ 383, 384.
- L. 1890, ch. 40.—So far as it relates to feeble-minded women consolidated in State Charities Law, § 385. Balance of act superseded by § 87 of Insanity Law.
- L. 1892, ch. 227.—Consolidated in State Charities Law, §§ 250-269.
- L. 1892, ch. 341.—Amends L. 1884, ch. 314, § 4, and L. 1885, ch. 42, in relation to appropriation for establishment of house of refuge for women. Temporary and obsolete.
- L. 1892, ch. 637.—Section 5 relates to election of officers of and purchase of land for reformatory for women. Temporary and obsolete. Rest of act repealed by L. 1896, ch. 546, § 170.
- L. 1893, ch. 53.—Sections 1, 4 amended to read as follows by L. 1899, ch. 272, §§ 1, 2. Section 9 is covered by consolidated State Charities Law, § 300. Section 10, pt., adding § 11 to L. 1881, ch. 278, is obsolete. Sections 2, 3, 5, 8, 10, pt., adding §§ 12, 13 to L. 1881, ch. 278, consolidated in State Charities Law, §§ 300, 302, 303, 305-307, 310, 311.
- L. 1893, ch. 355.—Consolidated in State Charities Law, § 309.
- L. 1894, ch. 414.—Consolidated in State Charities Law, §§ 285-288.
- L. 1894, ch. 468.—Sections 1, 2, 5, 6, 8 amended to read as follows by L. 1897, ch. 47, § 1; L. 1906, ch. 451, § 1, and L. 1907, ch. 597, § 1. Sections 3, 4 consolidated in State Charities Law, §§ 322, 323. Section 7 provides for the purchase of site and erection of building for the New York State Woman's Relief Corps Home. Temporary and has served its purpose. Obsolete. Section 9 is an appropriation. Section 10 states when act shall take effect.
- L. 1895, ch. 877.—Consolidated in State Charities Law, §§ 125-128.
- L. 1896, ch. 242.—Consolidated in State Charities Law, § 346.
- L. 1896, ch. 405.—Consolidated in State Charities Law, § 116.
- L. 1896, ch. 546.—This statute, which is the former State Charities Law, is recommended for repeal because its live provisions have been incorporated in the State Charities Law, except § 153, which provides for notice of completion of the Bedford Reformatory, and is recommended for repeal as obsolete.
- L. 1896, ch. 587.—All but the last clause is covered by § 148 of State Charities Law; § 229, this law. Last clause consolidated in State Charities Law, § 207.
- L. 1896, ch. 914.—Consolidated in State Charities Law, §§ 170-174.
- L. 1896, ch. 948, § 1, pt., pp. 1049, 1050.—Requires reports from officers and treasurers of state charitable institutions to be made annually to the comptroller. Superseded by §§ 45, 46 of State Charities Law, and § 51 of Insanity Law.
- L. 1897, ch. 47.—Section 1 consolidated in State Charities Law, § 320. Section 2 is an appropriation. Section 3 states when act shall take effect.
- L. 1898, ch. 264.—Consolidated in State Charities Law, §§ 360-368.
- L. 1898, ch. 359.—Consolidated in State Charities Law, §§ 103, subd. 5, 107, subd. 5.
- L. 1899, ch. 246.—Consolidated in State Charities Law, §§ 120-124.
- L. 1899, ch. 272.—Consolidated in State Charities Law, §§ 301, 304.
- L. 1899, ch. 368.—Consolidated in State Charities Law, §§ 350-356.
- L. 1899, ch. 632.—Section 1, pt., amending L. 1896, ch. 546, § 146, subd. 1, amended to read as follows by L. 1904, ch. 169, § 1. Balance of section consolidated in State Charities Law, § 226, subds. 2-4. Section 2 states when act shall take effect.

L. 1909, ch. 56.

Consolidators' notes.

L. 1900, ch. 49.—Consolidated in State Charities Law, § 225.

L. 1900, ch. 369.—Sections 1-3, 5, 6, 8-10 consolidated in State Charities Law, §§ 130-132, 134, 135, 137-139. Sections 4, 7 amended to read as follows by L. 1901, ch. 38, §§ 1, 2. Section 11 is an appropriation. Section 12 states when act shall take effect.

L. 1900, ch. 416.—Sections 1-6, 9-12, 14, 16 consolidated in State Charities Law, §§ 150-159, 161, 163. Sections 7, 8 relate to procuring sites and building for tuberculosis hospital. Temporary and obsolete. Sections 13, 15 amended to read as follows by L. 1902, ch. 108, §§ 1, 2. Section 17 is an appropriation. Section 18 states when act shall take effect.

L. 1900, ch. 769.—Section 1 consolidated in State Charities Law, § 11. Section 2 repeals all inconsistent laws. Section 3 states when act shall take effect.

L. 1901, ch. 38.—Section 1, pt., amending L. 1900, ch. 369, § 4, subd. 3, amended to read as follows by L. 1901, ch. 421, § 1. Rest of § 1 and § 2 consolidated in State Charities Law, §§ 133, 136. Section 3 states when act shall take effect.

L. 1901, ch. 421.—Consolidated in State Charities Law, § 133, subd. 3.

L. 1902, ch. 252.—Section 1, pt., amending L. 1896, ch. 546, §§ 44, 48-50 amended to read as follows by L. 1903, ch. 473, § 1. Balance of section consolidated in State Charities Law, §§ 40-43, 45-47, 380-382. Section 2 is a repealing section. Section 3 states when act shall take effect.

L. 1903, ch. 473.—Section 1, pt., amending L. 1896, ch. 546, §§ 48-50 amended to read as follows by L. 1905, ch. 457, § 1, and L. 1906, ch. 685, § 1. Balance of section consolidated in State Charities Law, § 44. Section 2 states when act shall take effect.

L. 1904, ch. 165.—Consolidated in State Charities Law, § 222.

L. 1904, ch. 167.—Section 1 consolidated in State Charities Law, § 180. Section 2, pt., amending L. 1896, ch. 546, § 121, amended to read as follows by L. 1905, ch. 613, § 1. Balance of section consolidated in State Charities Law, §§ 184, 185, 191, 192, 197, 198. Section 3 states when act shall take effect.

L. 1904, ch. 169.—Section 1 amended to read as follows by L. 1904, ch. 453, § 2. Section 2 consolidated in State Charities Law § 228. Section 3 states when act shall take effect.

L. 1904, ch. 221.—Amends § 3 of L. 1886, ch. 539, as amended by L. 1893, ch. 470. L. 1893, ch. 470, was not expressly repealed, but the substance of this amendment is covered by §§ 124, 126 of State Charities Law, §§ 184 and 191, this law. Superseded and obsolete.

L. 1904, ch. 453.—Section 1, pt. adding § 135, subds. 3, 4, to L. 1896, ch. 546, amended to read as follows by L. 1906, ch. 225, § 1. Balance of § 1, and §§ 2, 3 consolidated in State Charities Law, §§ 199-203, 205, 206, 208-211, 213, 214, 220, 226, subd. 1. Section 4 states when act shall take effect.

L. 1904, ch. 462.—Consolidated in State Charities Law, §§ 90-94.

L. 1905, ch. 452.—Consolidated in State Charities Law, § 13.

L. 1905, ch. 457.—Consolidated in State Charities Law, §§ 48, 49.

L. 1905, ch. 458.—Consolidated in State Charities Law, § 107, subd. 11.

L. 1905, ch. 459.—Consolidated in State Charities Law, §§ 106, 108, 115.

L. 1905, ch. 613.—Consolidated in State Charities Law, § 181.

L. 1906, ch. 225.—Consolidated in State Charities Law, § 204.

L. 1906, ch. 376.—Consolidated in State Charities Law, §§ 160, 162.

L. 1906, ch. 451.—Consolidated in State Charities Law, §§ 321, 324, 325, 327, 328.

L. 1907, ch. 283.—Consolidated in State Charities Law, § 50.

L. 1907, ch. 380.—Consolidated in State Charities Law, § 3.

L. 1907, ch. 597.—Consolidated in State Charities Law, § 326.

STATE COLLEGE OF FORESTRY.

Management and control; See Forestry.

STATE COMPTROLLER.

Deputies; Executive L., § 41. Examiners in office; Executive L., § 45.

Duties generally as to state finances, see State Finance.

STATE COUNCIL OF DEFENSE.

L. 1917, ch. 369.—An act establishing a state council of defense and defining the powers and duties of such council and making an appropriation therefore. (In effect May 4, 1917.)

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Section 1. The governor may appoint a council consisting of not more than seven persons, each of whom shall have special knowledge of some industry, public utility or the development of some natural resource or be otherwise especially qualified for the performance of the duties hereinafter provided. The governor shall be chairman of the council and he may designate a vice-chairman thereof. The members of such council shall serve without compensation but shall be allowed actual expenses of travel when attending meetings of the council or engaged in investigations pertaining to its activities.

It shall be the duty of the council to make investigations and to report in reference to the location and capacity of railroads, automobiles, and all other means of transportation and conveyance within the state so as to determine their availability to the military purposes of the state and to render possible the expeditious mobilization and concentration of state troops and supplies to points of defense and military advantage; to make such investigations and report in reference to the military and naval resources of the state and the development and the enlargement thereof; to make such investigations and report in reference to the production within the state of articles and materials essential to the support of the military forces of the state and the location, method, means of production and availability of military supplies; the giving of information to producers and manufacturers as to the class of supplies needed by such military forces and the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the state for military purposes; and in general to make all investigations, arrangements and plans for the efficient co-ordination and co-operation of the military, industrial, agricultural and commercial resources of the state in time of war.

The council shall have power to employ assistants and subordinates and fix their compensation. Persons so employed shall be deemed to be in the military service of the state.

§ 2. No board, officer or commission shall hereafter order or contract for the purchase of property or direct that any expense be incurred pursuant to the appropriations made by chapters three, one hundred and three and two hundred and five of the laws of nineteen hundred and seventeen until the state defense council shall have authorized the purchase or expense, limiting the amount of the expenditure therefor, and shall have delivered a certificate of such authorization to the comptroller and to the board, officer or commission for whom or which such appropriations were made. Such authority may be revoked at any time by the commission except as to obligations incurred before such revocation. Except as to expenditures heretofore ordered or incurred, no warrant shall hereafter be drawn by the comptroller for the payment of moneys from any such appropriations unless the item or account to be paid is included in

L. 1917, ch. 369.

Powers and duties.

§ 3.

an expenditure authorized by the state defense council as herein provided. The authority of the state defense council for each item of a proposed purchase or other expenditure shall not be necessary. Such authority may be granted for the expenditure of stated amounts, from time to time, for stated purposes.

§ 3. The sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for carrying out the provisions of this act, and for the organization and development of the military resources of the state. The sum hereby appropriated shall be expended upon the approval of the council and the audit and warrant of the comptroller of the state.

STATE ENGINEER.

Salary, expenses, deputy, general duties; Executive Law, §§ 70-76.

STATE FAIR.

See Agricultural Law, §§ 290-294.

STATE FINANCE LAW.

L. 1909, ch. 58.—“An act in relation to state finance, constituting chapter ~~sixty-six~~ of the Consolidated Laws.”

[In effect February 17, 1909.]

CHAPTER LVI OF THE CONSOLIDATED LAWS.**STATE FINANCE LAW.**

- Article 1. Short title (§ 1).
2. General fiscal provisions (§§ 2–51).
3. General fund (§§ 55, 56).
4. Canal funds (§§ 60–65).
5. Education fund (§§ 80–93).
6. Miscellaneous funds (§§ 100–103).
7. Laws repealed; when to take effect (§§ 110, 111).

ARTICLE I.**SHORT TITLE.****Section 1. Short title.**

§ 1. Short title.—This chapter shall be known as the “State Finance Law.”

Source.—Former State Finance L. (L. 1897, ch. 413) § 1.

General note.—The State Finance Law comprises L. 1897, ch. 413, which constituted “The State Finance Law” of the general laws, its amendments and such independent general statutes as are germane to the subject matter of said chapter. [Report of Board of Statutory Consolidation, p. 538.]

ARTICLE II.**GENERAL FISCAL PROVISIONS.****Section 2. Fiscal year.**

- 2-a. Semi-monthly payment of state salaries and wages.
3. Duties of treasurer.
4. Duties of comptroller.
5. Treasurer's checks and accounts.
6. Custody of state securities.
7. Examination of state securities.
8. Deposit in banks.
9. Monthly statement of balances in state depositories.
10. Deposit of moneys by state officers.

11. Deposit of moneys by charitable and benevolent institutions.
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44. When money paid into court to be paid to state treasurer.
45. Public accounts to be kept in dollars, dimes and cents.
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47. Annual reports to legislature by institutions entitled to receive money from state.
48. Statement of desired appropriations to be filed with comptroller.
49. Duty of comptroller as to tabulation of statements.
50. Separate specifications for contract work for the state.
51. Workmen's compensation insurance on public works.

§ 2. **Fiscal year.**—The fiscal year of all offices, asylums, hospitals, charitable and reformatory institutions in this state shall begin with the first day of July and end with the next following thirtieth day of June. All books and accounts in the offices of the comptroller and treasurer shall be kept by fiscal years. All annual accounts required to be rendered to the comptroller or treasurer by any person shall be closed on the thirtieth

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L. 1909, ch. 58.

day of June in each year, and rendered as soon thereafter as practicable, if no time is specially prescribed by law. The first fiscal year under this section as hereby amended shall begin on the first day of July, nineteen hundred and sixteen; and the current fiscal year is hereby abridged, to end on the thirtieth day of June in such year.

Where any statute provides, in terms or effect, that any inventory or account, or a report relating in whole or in part to receipts and disbursements of money, be made to the legislature or any state officer annually, or for a year, by a board, commission or officer under the state government, such inventory or account, and such report so far as it relates to such receipts and disbursements, shall be for the preceding fiscal year, unless the calendar year be expressly mentioned. (*Amended by L. 1916, ch. 118, §1.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 2; originally revised from L. 1831, ch. 320, §§ 24, 25, 26.

§ 2-a. **Semi-monthly payment of state salaries and wages.**—The salaries of all officers of the state, and the wages of all employees thereof shall be due from and payable by the state twice each month, on the first and sixteenth days thereof, except where such days fall upon Sunday or a legal holiday when such payments shall be made upon the succeeding business day. Said salaries and wages shall be subject to all the provisions of section thirteen hundred and ninety-one of the code of civil procedure applicable to any wages, debts, earnings or salary, as if the state and the said wages and salary due and payable by it had been particularly designated therein. The provisions of this section shall be deemed to supersede any other provision of this chapter or of any general or special law inconsistent herewith. (*Added by L. 1910, ch. 317.*)

Application.—The provisions of this section as to the semi-monthly payment of salary applies to the employees of all state institutions. Rept. of Atty. Genl. (1910) 946.

The provision of this section as to semi-monthly payment of salaries applies to the salary of special agents in the Excise Department. Rept. of Atty. Genl. (1910) 758.

The provisions of this section are not mandatory and the semi-monthly payment of salaries or wages may be waived by any state officer or employee. Justices of the Supreme Court and Judges of the Court of Appeals are entitled to the privileges conferred by this section. Rept. of Atty. Genl. (1910) 499.

§ 3. **Duties of treasurer.**—The treasurer shall receive all moneys paid into the treasury of the state, pay all warrants drawn by the comptroller on the treasury, make no payment out of the treasury except on the warrant of the comptroller, unless otherwise provided by law, and annually report to the legislature an exact statement of the balance in the treasury, at the close of the preceding fiscal year, with a summary of the receipts into and payments from the treasury during such year.

Source.—Former State Finance L. (L. 1897, ch. 413) § 3; originally revised from R. S., pt. 1, ch. 8, tit. 4, §§ 1, 5, 6.

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Application.—Where the assignment of moneys due upon a contract for the improvement of a state highway has been filed, it is the duty of the treasurer to determine whether the person to whom the warrant of the comptroller issues, is entitled to payment. Rept. of Atty. Genl. (1909) 401.

Canal fund is under custody and control of the treasurer. People ex rel. Southwick v. Bristol (1869), 1 Lans. 45.

Delegation of power.—Treasurer may delegate to a clerk in his office power to indorse drafts. Duties prescribed by statute to be performed by treasurer in person cannot be delegated. People v. Bank of North America (1879), 75 N. Y. 547.

Liability of State Treasurer for funds in his keeping, see Rept. of Atty. Genl. (1911) 124.

Return of fines and penalties.—Fines and penalties paid to the State-Treasurer pursuant to § 290 of the Highway Law may not be returned by the Treasurer after a reversal of the judgment. Rept. of Atty. Genl. (1911) 35.

Section cited.—Armstrong v. State Bank of Mayville (1917), 177 App. Div. 265, 165 N. Y. Supp. 5.

§ 4. Duties of comptroller.—The comptroller shall:

1. Superintend the fiscal concerns of the state.
2. Keep, audit and state all accounts in which the state is interested, and keep accurate and proper books, showing their conditions at all times.
3. Examine, audit and settle the accounts of all public officers and other persons indebted to the state, and certify the amount or balance due thereon.
4. Examine, audit and liquidate the claims of all persons against the state, if payment thereof out of the treasury is provided for by law.
5. Draw warrants on the treasury for the payment of the moneys directed by law to be paid out of the treasury, but no such warrant shall be drawn unless authorized by law, and every such warrant shall refer to the law under which it is drawn. (*Subd. amended by L. 1913, ch. 342.*)
6. Make a report to the legislature at its annual session, containing a complete statement of the funds of the state, its resources and public expenditures during the preceding fiscal year, a statement of each object of expenditure, the funds, if any, from which it is to be defrayed, and a statement of all claims against the state presented to him where no provision or an insufficient provision for the payment thereof has been made by law, with the facts relating thereto and his opinion thereon, and suggesting plans for the improvement and management of the public resources, and containing such other information and recommendations relating to the fiscal affairs of the state, as in his judgment should be communicated to the legislature. He shall also report to the legislature on or before February first in each year the expenditures, except for construction work and permanent betterments, of each state department, commission, board, bureau, office and institution, for the first six months of the then current fiscal year. (*Subd. amended by L. 1916, ch. 118.*)
7. Represent and vote for the state, either in person or by proxy, at

all meetings and on all occasions where the state is entitled to representation or vote as stockholder in a corporation or joint-stock association.

8. Supervise the administration of all the funds paid into any court of record, or ordered to be so paid by a judgment, order or decree of any such court of record. He shall have power and authority to institute proceedings to enforce obedience to the judgments, orders or decrees of the said courts for the deposit of moneys and securities into court, and prescribe regulations and rules for the care and disposition thereof, which shall be observed by all parties interested therein, unless the court having jurisdiction over the same, shall make different directions, by special order duly entered in accordance with section seven hundred and forty-seven of the code of civil procedure; and the comptroller may at any time require any county clerk or clerk of any court of record, to file with any county treasurer an officially certified copy of any record, document or paper, or extracts therefrom, which he may deem necessary for the use of said county treasurer in the administration of such funds.

The comptroller shall not designate as a depository of funds or moneys paid into court any trust company, bank, banking association or banker, unless it shall pay a fair rate of interest on deposits thereof; and before making any deposit in any such depository of funds or moneys paid into court, the comptroller shall require such depository to execute to the people of the state an undertaking in such form as the attorney-general shall prescribe, and in an amount approved by the county judge of the county where such trust company, bank, banking association or banker is located, and by the comptroller. Such undertaking shall be filed in the office of the comptroller and shall be secured by a deposit of bonds as provided in section eight of this article. Or, in lieu of such undertaking and deposit of securities, the comptroller may require such depository to execute to the people of the state of New York an undertaking, with a surety company authorized to transact business in the state of New York as surety, in such form as the attorney-general shall prescribe, and in an amount approved by the county judge of the county where such trust company, bank, banking association or banker is located, and by the comptroller. (*Subd. 8 amended by L. 1914, ch. 205, L. 1915, ch. 415, and L. 1917, ch. 136, in effect Apr. 5, 1917.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 4, as amended by L. 1905, ch. 504; R. S., pt. 1, ch. 8, tit. 3, § 15; Code Civ. Pro. § 744, as amended by L. 1892, ch. 651, and L. 1896, ch. 269; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 1, 13; L. 1872, ch. 115.

References.—Other important duties of the State Comptroller are as follows: Auctioneers in cities to be licensed and regulated, General Business Law, §§ 23, 24. Canal affairs; bureau continued in office of comptroller, Canal Law, § 21. Court funds; action to recover, County Law, § 24-a. Fiscal accounts of municipalities; examination, etc., General Municipal Law, §§ 33-38. Highways; duties regarding, Highway Law, §§ 103, 143. Member state board of canvassers, Election Law, § 441; of state printing board, State Printing Law, § 2. Private detectives; licenses

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and regulation, General Business Law, §§ 70-75. Sales by comptroller for unpaid taxes, Tax Law, §§ 120-143. State paper; designation, Executive Law, § 82. State prisons; duties as to accounts, Prison Law, §§ 110, 125, 184, 193.

Application.—The provisions of this section are qualified by Code Civ. Pro. § 1581. *Thurston v. E. P. Wilbur Trust Co.* (1894), 7 Misc. 392, 27 N. Y. Supp. 923.

Chief financial officer of the State is the Comptroller. *Armstrong v. State Bank of Mayville* (1917), 177 App. Div. 265, 165 N. Y. Supp. 5.

Auditing of accounts by State Comptroller involves a judicial function. *People ex rel. Grannis v. Roberts* (1900), 163 N. Y. 75, 57 N. E. 98. The Comptroller is clothed with a judicial function in respect to a claim against the state for tax, and a tribunal is thus furnished for the determination and enforcement of such claims. *City of Buffalo v. New York State* (1906), 116 App. Div. 539, 101 N. Y. Supp. 595, *affd.* (1908), 191 N. Y. 534, 84 N. E. 1110. The Comptroller, in auditing claims or accounts, exercises a judicial function and his decision, within reasonable limits, is conclusive. *Rept. of Atty. Genl.* (1912) 370.

Power of Comptroller to audit printer's bills. *Rept. of Atty. Genl.* (1899) 175.

Audit of expenditures of Commission under Special Act.—Although the Comptroller has a certain duty to audit the expenditure of a Commission under a special act (L. 1912, ch. 541) his judgment and discretion cannot override the judgment and discretion of the Commission. *People ex rel. Heinrich v. Travis* (1916), 175 App. Div. 721, 161 N. Y. Supp. 860, *revg.* (1916), 96 Misc. 490, 160 N. Y. Supp. 737.

Audit of expense accounts.—The State Comptroller as the chief auditing power in the State government exercises a judicial power which is subject to review by the courts. He is required to audit expense and other accounts submitted to him item by item. His judgment and discretion must be based upon a decision that personal expenses were actually and necessarily incurred. For the convenience of audit and for the purpose of controlling extravagance by officers and employees rules limiting the amounts allowed for personal expenses may be formulated. These rules are not inflexible, but must, where the expense was actually and necessarily incurred, be modified or abrogated in compliance with a statute authorizing the expense. There is nothing in the law which deprives the Comptroller of the power to allow expenses to a New York City bureau woman employee while in Albany when called there temporarily in issuing a report of her department, for which by reason of her connection with the New York bureau she is peculiarly qualified, but, the Comptroller should audit and allow such expenses when necessarily incurred. *Rept. of Atty. Genl.* (1914) 72.

Supervision of administration of funds paid into court.—Construction of subdivision 8 in connection with section 744-a of the Code of Civil Procedure. *Matter of Walsh* (1912), 204 N. Y. 276, 278, 97 N. E. 715.

Payment of salaries through heads of departments unauthorized.—*Rept. of Atty. Genl.* (1909), 396.

Securities are not paid into court as trust funds under subdivision 8, where they have been delivered to a county treasurer, until the committee of an incompetent shall qualify. *Atty. Genl. Opin.* (1915), 5 State Dep. Rep. 459.

Return of license fees paid by mistake.—Where the Comptroller is satisfied that license fees have been paid into the state treasury by mistake, he may draw his warrant therefor on the Treasurer in favor of the person making such payment. *Rept. of Atty. Genl.* (1911) 278.

Recovery of excessive fees for the registration of motor vehicles paid under protest. *Fifth Ave. Coach Co. v. State of New York* (1911), 73 Misc. 498, 131 N. Y. Supp. 62.

Remedy where Comptroller has exceeded his power.—Claims for current expenses of the state government must be presented to the Comptroller for audit. Where arbitrary action on the part of the Comptroller in cutting down claim bills for work done for the state under authority of statute is shown and the comptroller has exceeded his power in allowing payment for less than the contract price, the claimant's remedy is by direct proceeding against the Comptroller to review that audit. *Quayle v. State of N. Y.* (1908), 192 N. Y. 447, 84 N. E. 583, affg. (1908), 124 App. Div. 81, 108 N. Y. Supp. 361.

Mandamus, when writ does not lie to compel Comptroller to reaudit expenses of Commissioners under L. 1912, ch. 541.—While mandamus lies to compel the Comptroller to act, it does not lie to direct him how to act, nor will the court instruct him in advance as to how he shall perform his duties. While, it seems, that it was the duty of the State Comptroller to check up the accounts of moneys expended by the Commissioners at the Panama-Pacific Exposition, for their expenses, under L. 1912, ch. 541, mandamus does not lie at the suit of a taxpayer to require the Comptroller again to examine into the accounts of the Commission and to audit and adjust the same and report to the Attorney-General any unauthorized expenditure of the appropriation. *People ex rel. Heinrich v. Travis* (1916), 175 App. Div. 721, 161 N. Y. Supp. 860, revg. (1916), 96 Misc. 490, 160 N. Y. Supp. 737.

§ 5. Treasurer's checks and accounts.—The comptroller shall countersign and enter in the proper books of his department all checks drawn by the treasurer and all receipts for money paid to the treasurer. Duplicate checks in lieu of issued checks lost or destroyed may be executed by the treasurer and comptroller to persons entitled to payment thereof upon such proofs and conditions as the treasurer and comptroller may in their discretion require to indemnify the state against loss. No such receipt shall be evidence of payment unless so countersigned. He shall keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him. He shall draw, in favor of the treasurer, on all corporations or companies in which the state may own stock, for the dividends on such stock as they become due. He shall procure from the books of the banks in which the treasurer makes his deposits, monthly statements of the moneys received and paid out of the same on account of the treasurer. On the first Tuesday of every month, or oftener if he deem it necessary, he shall carefully examine the accounts of the debits and credits in the bank-books kept by the treasurer. If he discovers any irregularity or deficiency therein, he shall, unless rectified or explained to his satisfaction, forthwith report the same to the governor.

Source.—Former State Finance L. (L. 1897, ch. 413) § 5, as amended by L. 1904, ch. 95; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 4-8.

Countersigning checks by Comptroller.—Checks drawn by the State Treasurer against funds in state depositories should be countersigned by the Comptroller, without questioning the depository from which the money is drawn. *Rept. of Atty. Genl.* (1911) 273.

§ 6. Custody of state securities.—All leases, bonds, mortgages, certificates of stock and other securities belonging to the state, and all papers re-

lating to the duties of the comptroller, or of the commissioners of the canal fund, or of the canal board, all deeds to the state, abstracts of title, and state contracts, unless otherwise specially directed, shall be deposited in the office of the comptroller.

Source.—Former State Finance L. (L. 1897, ch. 413) § 6; originally revised from R. S., pt. 1, ch. 8, tit. 3, § 16; L. 1833, ch. 56, § 4.

§ 7. **Examination of state securities.**—The comptroller, from time to time, shall examine the securities on which money may be due to the state, and make inquiries relating to the sufficiency of the security for the payment of such money. He shall require the immediate payment of all interest due, and the payment of such part of the principal as he deems necessary for the security and interest of the state.

Source.—Former State Finance L. (L. 1897, ch. 413) § 7; originally revised from R. S., pt. 1, ch. 8, tit. 3, § 9.

§ 8. **Deposit in banks.**—The state treasurer shall deposit all moneys received by him on account of the state, except such as belong to the canal fund, within three days after receiving the same, in such banks in the cities of the state, as in the opinion of the comptroller and treasurer are secure and pay the highest rate of interest to the state for such deposits. The moneys so deposited shall be placed to the account of the treasurer. He shall keep a bank-book in which shall be entered his account of deposit in and moneys drawn from the banks in which deposits are made by him, which he shall exhibit to the comptroller for his inspection on the first Tuesday of every month and oftener if required. The treasurer shall not draw any moneys from such banks unless by checks subscribed by him as treasurer and countersigned by the comptroller, unless otherwise provided by law. No moneys shall be paid by any such bank out of any such deposit except upon such checks. Every such bank shall transmit to the comptroller monthly statements of all moneys received and paid by it on account of the treasurer.

Banks designated for the deposit of state moneys under the provisions of this section shall before deposits are made severally execute and file with the treasurer a bond to the state in such form and with such surety or sureties for such sum as may be prescribed and approved by the treasurer and comptroller, for the safe keeping and prompt payment of such moneys on legal demand therefor with interest at the rate agreed upon, or may in lieu of such surety bond deposit with the comptroller outstanding unmatured bonds issued by the state of New York for which the treasurer and comptroller shall deliver a certificate of deposit containing the conditions of said surety bond. On the withdrawal of all moneys from any depository and a closing and settlement of the account thereof, the treasurer and comptroller may in their discretion certify to such settlement and direct the surrender of such surety bond or deposit to the obligors or owner entitled thereto.

Source.—Former State Finance L. (L. 1897, ch. 413) § 8, as amended by L. 1901, ch. 678; L. 1904, ch. 97, and L. 1905, ch. 372; originally revised from R. S., pt. 1, ch. 8, tit. 4, §§ 7, 10–13; L. 1872, ch. 323; L. 1874, ch. 323, § 1.

Sufficiency of bond of state depositories. Bonds executed by personal sureties and secured by a deposit of collateral satisfactory to the State Treasurer and Comptroller may be accepted from depositories of state funds. Rept. of Atty. Genl. (1909) 395.

Bonds given by depositories of general state funds should be filed with the State Treasurer. Rept. of Atty. Genl. (1909) 388.

Banking institutions designated as depositories of state moneys may give one bond as security for deposits of both general and canal funds to be filed with the State Treasurer. Rept. of Atty. Genl. (1910) 577.

Withdrawal.—Treasurer is authorized to direct from which bank, holding deposits of canal fund, money shall be drawn by warrant of the auditor. People ex rel. Southwick v. Bristol (1869), 1 Lans. 45.

Liability of State Treasurer.—The State Treasurer while he is liable for all funds in his hands, is not liable for those funds properly placed in duly designated depositories which have given the required security and performed the conditions required by law. The principal that public officers are strictly liable in any event, save only the act of God and a public enemy, for all funds in their hands and under their control applies to the State Treasurer in regard to all moneys in his hands from the time it is paid to him until he either deposits it or disburses it or accounts for it according to law and his liability includes liability for the acts of his employees. Rept. of Atty. Genl. (1909) 389.

§ 9. **Monthly statement of balances in state depositories.**—The state treasurer shall cause to be published in the state paper, on or before the tenth day of each month, a detailed statement of the balances in the several banks designated by any state officer or board as a depository of state funds. Such statement shall contain the name of each bank and the amount subject to draft at the close of the month preceding such publication. All officers, departments, commissions or boards receiving fees or penalties shall certify to the comptroller, on or before the tenth day of January, April, July and October in each year, the amount of moneys on their hands or on deposit at the close of the quarter preceding in the banks designated to receive such deposits, and shall pay over such amount at once to the treasurer of the state.

Source.—Former State Finance L. (L. 1897, ch. 413) § 9; originally revised from L. 1877, ch. 245.

§ 10. **Deposit of moneys by state officers.**—Every state officer or other person except the state treasurer, receiving or disbursing moneys belonging to the state, shall deposit at such rate of interest as the comptroller may fix all the moneys received by him, to his official credit in a bank or trust company, to be designated by the comptroller, which shall give a bond with sufficient sureties for the security of such deposit, to be approved by the comptroller and filed in his office, or may, in lieu of such surety bond, deposit with the comptroller outstanding unmatured bonds issued by the state of New York for which the comptroller shall deliver a certificate of deposit containing the conditions of said surety bond. On the

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withdrawal of all moneys from any such depository and a closing and settlement of the account thereof, the comptroller may in his discretion certify to such settlement and direct the surrender of such surety bond or deposit to the obligors or owner entitled thereto. (*Amended by L. 1911, ch. 294.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 10; originally revised from L. 1888, ch. 326.

Additional bond to superintendent of public works is unnecessary. The bond running to the state meets the requirement of the statute. Rept. of Atty. Genl. (1911) 27.

§ 11. Deposit of moneys by charitable and benevolent institutions.—Every charitable and benevolent institution supported, in whole or in part, by the state, shall deposit at interest, all its funds received from the state in a bank or trust company, which shall give a bond with sufficient sureties for the security of such deposit, to be approved by the comptroller and filed in his office, or may, in lieu of such surety bond, deposit with the comptroller outstanding unmatured bonds issued by the state of New York for which the comptroller shall deliver a certificate of deposit containing the conditions of said surety bond. On the withdrawal of all moneys from any such depository and a closing and settlement of the account thereof, the comptroller may in his discretion certify to such settlement and direct the surrender of such surety bond or deposit to the obligors or owner entitled thereto. (*Amended by L. 1911, ch. 295.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 11; originally revised from L. 1884, ch. 415.

§ 12. Proofs required upon audit by the comptroller.—The comptroller shall not draw his warrant for the payment of any sum appropriated, except for salaries and other expenditures and appropriations, the amounts of which are duly established and fixed by law, until the person demanding the same presents to him a detailed statement thereof in items and makes all reports required of him by law. If such statement is for services rendered or articles furnished, it must show when, where, to whom and under what authority they were rendered or furnished; if for traveling expenses, the distance traveled, between what places, the duty or business for the performance of which the expenses were incurred, and the dates and items of each expenditure; if for transportation, furniture, blank and other books purchased for the use of offices, binding, blanks, printing, stationery, postage, cleaning and other necessary and incidental expenses, a bill duly receipted must be attached to the statement. Each statement of accounts must be verified by the person presenting the same to the effect that it is just, true and correct, that no part thereof has been paid, except as stated therein, and that the balance therein stated is actually due and owing. No payment shall be made to any salaried state officer or commissioner having an office established by

law, for personal expenses incurred by him while in the discharge of his duties as such officer or commissioner at the place where such office is located. No manager, trustee or other officer of any state charitable or other institution, receiving moneys from the state treasury in whole or in part for the maintenance or support of such institution, shall be interested in any purchase or sale by any of such officers.

Source.—Former State Finance L. (L. 1897, ch. 413) § 12; originally revised from L. 1896, ch. 984, (App. Act) p. 1061.

Expenses of state officials and employees.—Traveling expenses of state officials, when allowed. Rept. of Atty. Genl. (1906) 319.

Under chapter 811 of the Laws of 1911, game protectors from districts other than that which includes Albany are entitled to their expenses while engaged at such work in Albany under the orders of the Commission or chief protector. Rept. of Atty. Genl. (1912) 367.

A special agent of the Conservation Commission is not entitled to payment for his expenses while in Albany in connection with his official duties. Rept. of Atty. Genl. (1912) 286.

A director of the division of contagious diseases in the state department of health, the office thereof being located at Albany, is not entitled to be reimbursed for traveling expenses from his home to Albany, when that travel is undertaken by him, not in the discharge of his official duty, but in order that he may present himself for duty at the office of the department. Rept. of Atty. Genl. (1907) 295.

Living expenses of any salaried state officer or commissioner may not be allowed while he is at the place where his office is located. But an employee of any state department may be allowed the expense of meals while on field work at such a distance from his home or headquarters as would properly prohibit him from going to his home for such meals. Rept. of Atty. Genl. (1911) 452.

Receipted bill.—Detailed statement of items furnished the state by merchants and others must be accompanied by receipted bill, before payment can be made. Rept. of Atty. General. (1910) 534.

§ 13. Regulations for the transmission of public moneys.—The comptroller may make such regulations and give such directions from time to time, respecting the transmission to the treasury of moneys belonging to the state from the several county treasurers and other public officers as in his judgment is most conducive to the interests of the state. He may, in his discretion, audit, allow and cause to be paid the expenses necessarily incurred under or in consequence of such regulations and directions or so much thereof as he deems equitable and just.

Source.—Former State Finance L. (L. 1897, ch. 413) § 13; originally revised from L. 1843, ch. 44.

§ 14. Temporary loans and revenue bonds.—From time to time as the legal demands on the treasury render it necessary, the comptroller may make such temporary loans at a rate of interest not exceeding five per centum per annum, as are necessary to discharge such demands, and may issue transfer certificates for the amount borrowed, with interest, payable semi-annually, and the principal payable at such time or times not exceeding seven years, at which, in his opinion, the treasury will be in a condition to pay the same from the revenues of the state applicable to their

payment, and so much of such revenues as will be sufficient to pay the amount borrowed, are pledged to that object. The comptroller may issue bonds in anticipation of revenues derived from taxes authorized by law to be collected for the current expenses of the government, not exceeding six millions of dollars in any one year, payable within six months of the date of issue and drawing interest at the least rate obtainable by him. The proceeds of such bonds shall be applied in payment of the current expenses of the government and to no other object. When received into the treasury so much as may be necessary of these revenues in anticipation of which any such bonds are issued shall be applied exclusively to the payment of the principal and interest of such bonds. The comptroller is authorized to issue, whenever he may deem it for the best interests of the state so to do, bills or notes at a rate of interest not exceeding five per centum per annum, hereinafter described as "notes," maturing within a period not to exceed one year, in anticipation of the sale of bonds duly authorized at the time such notes are issued. The proceeds of the sale of such notes shall be used only for the purposes for which may be used the proceeds of the sale of bonds in anticipation of the sale whereof the notes were issued. All of such notes and any renewals thereof shall be payable at a fixed time, from the proceeds of the sale of bonds, and no renewal of any such note shall be issued after the sale of bonds in anticipation of which the original note was issued. In the event that a sale of such bonds shall not have occurred prior to the maturity of the notes so issued in anticipation of such sale the comptroller shall, in order to meet the notes then maturing, issue renewal notes for such purpose. Every such note and renewal note shall be payable from the proceeds of the next succeeding sale of bonds and not otherwise. The total amount of such notes or renewals thereof issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued and if no sale of bonds shall have been held within six months preceding the issue of such notes then the total amount of such notes or renewals thereof, issued and outstanding, shall at no time exceed the total amount of bonds authorized to be issued on the date, which shall be six months after such last preceding sale. The comptroller shall include in his annual report, a detailed statement of all such loans made and bonds issued during the year and of his proceedings in relation thereto. (*Amended by L. 1913, ch. 645, and L. 1915, ch. 333.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 14, as amended by L. 1902, ch. 366; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 11, 12; L. 1837, ch. 150, § 59; L. 1880, ch. 100.

Constitutionality; borrowing money; anticipation of revenue.—The provisions of this section, authorizing the Comptroller to borrow money for the current expenses of government by temporary loans, in anticipation of, and payable out of, fixed revenues to be collected, are not violative of sections 2 and 4 of Article VII of the Constitution, which inhibits the contracting of debts in excess of \$1,000,000, except upon referendum vote of the people. Rept. of Atty. Genl. (1915) 161.

§ 15. **New in place of lost certificates.**—The comptroller may issue to the lawful owner of any certificate or bond issued by him in behalf of this state, which he is satisfied, by due proof filed in his office, has been lost or casually destroyed, a new certificate or bond, corresponding in date, number and amount with the certificate or bond so lost or destroyed, and expressing on its face that it is a renewed certificate or bond. No such renewed certificate or bond shall be issued unless sufficient security is given to satisfy the lawful claim of any person to the original certificate or bond, or to any interest therein. The comptroller shall report annually to the legislature the number and amount of all renewed certificates or bonds so issued.

Source.—Former State Finance L. (L. 1897, ch. 413) § 15; originally revised from L. 1857, ch. 721.

§ 16. **Accounts and contracts.**—The comptroller shall prepare a form of accounts to be observed in every state charitable institution, reformatory, house of refuge, industrial school, department, board or commission, which shall be accepted and followed by them respectively, after thirty days' notice thereof. Such forms shall include such a uniform method of book-keeping, filing and rendering of accounts as may insure a uniform statement of purchase of like articles, whether by the pound, measure or otherwise, as the interests of the public service may require, and a uniform method of reporting in such institutions and departments, the amount and value of all produce and other articles of maintenance raised upon the lands of the state, or manufactured in such institution, and which may enter into the maintenance of such institution or department. All purchases for the use of any department, office or work of the state government shall be for cash. Each voucher, whether for a purchase or for services or other charge shall be filled up at the time it is taken. Where payment is not made directly by the state treasurer, proof in some proper form shall be furnished on oath that the voucher was so filled up at the time it was taken, and that the money stated therein to have been paid, was in fact paid in cash or by check or draft on some specified bank.

Before any contract made for or by any state charitable institution, reformatory, house of refuge, industrial school, officer, department, board or commission, shall be executed or become effective, when such contract exceeds one thousand dollars in amount, it shall first be approved by the comptroller and filed in his office. Whenever any liability of any nature shall be incurred by or for any state charitable institution, reformatory, house of refuge, industrial school, officer, department, board or commission, notice that such liability has been incurred shall be immediately given in writing to the state comptroller. Whenever any supplies or materials are furnished to any state charitable institution, reformatory, house of refuge, industrial school, officer, department, board or commission, a duplicate of the invoice shall be delivered to the comptroller at the same time that it is

delivered to the officer, department or institution receiving the supplies or materials.

This section, as amended, shall be deemed to supersede any other provision of this chapter or of any other general or special law inconsistent therewith. (*Amended by L. 1913, ch. 342.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 16; originally revised from L. 1842, ch. 310, as amended by L. 1855, ch. 535, § 3; L. 1888, ch. 270.

The purpose of the amendment of 1913 in requiring the State Comptroller to approve contracts over \$1,000, was to prevent officers and agents of the State from creating a liability binding upon the State for the payment of which there is no available appropriation, and to create a check upon the making of contracts apparently improvident or extravagant to a degree which will bring serious loss upon the State. Rept. of Atty. Genl. (1915) 28.

Authorization of work without contract.—Neither the principal of a normal school nor the Department of Education is authorized to cause work upon a school building in excess of \$1,000 to be done without contract. Atty. Genl. Opin. (1915), 5 State Dept. Rep. 488.

State industrial school at Rochester is subject to the provisions of this section. Rept. of Atty. Genl. (1897) 310.

Exchanges of products prohibited.—All exchanges by state institutions of their products for other products are prohibited. The statute providing that all supplies shall be purchased for cash and products sold for cash. Rept. of Atty. Genl. (1910) 812.

§ 17. Itemized and monthly accounts of public officers.—The proper officer of each state hospital, asylum, charitable or reformatory institution, the state hospital commission, the state board of charities, the state board of health, the conservation commission and all other state commissions, commissioners and boards, shall, on or before the fifteenth day of each month, render to the comptroller a detailed and itemized account of all receipts and expenditures of such hospital, asylum, institution, commission, or board of commissioners during the month next preceding. Such account shall give in detail the source of all receipts, including the sums received from any county, and to be accompanied by original and proper vouchers for all funds paid from the state treasury, unless such vouchers have been previously filed with the comptroller and have appended or annexed thereto the affidavit of the officer making the same to the effect that the goods and other articles therein specified were purchased and received by him or under his direction; or that the indebtedness was incurred under his direction; that the goods were purchased at a fair cash market price and that neither he, nor any person in his behalf, had any pecuniary or other interest in the articles purchased or in the indebtedness incurred; that he received no pecuniary or other benefit therefrom, nor any promises thereof; that the articles contained in such bill were received by him, and that they conformed in all respects to the goods ordered by him or under his direction, both in quality and quantity. The state comptroller, the president of the state board of charities, and the fiscal supervisor of state charities shall from time to time classify into grades the officers

and employees of the various charitable and reformatory institutions required by law to report to the fiscal supervisor, and in the month of September of each year recommend to the governor such changes in the salaries or wages of such officers and employees for the ensuing fiscal year as may seem proper, but such changes shall not be made unless the governor shall approve the same in writing. Differences in the expense of living and rates of wages in the localities in which such institutions are situate may be considered. The comptroller shall have the power of audit subject to such classification. (*Amended by L. 1914, ch. 215, and L. 1916, ch. 118, § 3.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 17, as amended by L. 1899, ch. 383; L. 1901, ch. 432, and L. 1903, ch. 239; originally revised from L. 1888, ch. 270, § 1.

The functions of the Salary Classification Commission defined.—Rept. of Atty. Genl. (1912) 299.

Classification and salaries of officers and employees of charitable and reformatory institutions. Rept. of Atty. Genl. (1901) 164.

Vacation salary.—An employee under the rules of the salary classification commission is entitled to salary for two weeks vacation, even though he resigns his position at the end of that period. Rept. of Atty. Genl. (1909) 702.

Mandamus will not lie to require the state board of charities to classify a person whose claim for compensation is based solely on an appointment by the board of managers of the Rome State Custodial Asylum, which they were without legal authority to make. *Matter of Lake v. Stoddard* (1908), 125 App. Div. 305, 109 N. Y. Supp. 523.

§ 18. **Inspection of supplies and entry in books.**—The steward, clerk or bookkeeper in every such institution, board or commission shall receive and examine all articles purchased or received for the maintenance thereof, compare them with the bills for the same, ascertain whether they correspond in weight, quality or quantity, and inspect the supplies thus received. Such steward, clerk or bookkeeper shall enter each bill of goods thus received in the books of the institution or department at the time of receipt thereof. He shall make a full memorandum in the book of accounts of such institution of any difference in weight, quality or quantity of any article received from the bill thereof, and no goods or other articles of purchase or manufacture or farm or garden production of land of the institution shall be received unless so entered in such book with the proper bill, invoice or statement, according to the form of accounts and record prescribed by the comptroller. In accounts for repairs or new work, the name of each workman, the number of days employed and the rate and amount of wages paid to him shall be given. If contracts are made for repairs or new work, or for supplies, a duplicate thereof, with specifications, shall be filed with the comptroller. The steward of every such institution or other officer performing the duties of a steward under whatever name, shall take, subscribe and file with the comptroller, before entering on his duties, the constitutional oath of office, and may administer oaths and take affidavits concerning the business of such institution.

Source.—Former State Finance L. (L. 1897, ch. 413) § 18; originally revised from L. 1888, ch. 270, § 1.

§ 19. Deposit in banks of moneys received by state institutions.—Every state institution supported, in whole or in part. by the state, shall deposit at interest, all its funds in a bank or trust company, which shall give a bond with sufficient sureties for the security of such deposit, to be approved by the comptroller and filed in his office, or may in lieu of such surety bond deposit with the comptroller outstanding unmatured bonds issued by the state of New York for which the comptroller shall deliver a certificate of deposit containing the conditions of said surety bond. On the withdrawal of all moneys from any such depository and a closing and settlement of the account thereof, the comptroller may in his discretion certify to such settlement and direct the surrender of such surety bond or deposit to the obligors or owner entitled thereto. (*Amended by L. 1910, ch. 77, and L. 1911, ch. 293.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 19, as amended by L. 1901, ch. 457; originally revised from L. 1888, ch. 270, § 1.

Deposit of bequest pending investment.—Where a sum of money is bequeathed to the board of managers of a state hospital, as trustees for the institution, with directions that the fund be kept invested, the fund should be deposited in a bank designated by the Comptroller pending its investment. Rept. of Atty. Genl. (1912) 477.

§ 20. Annual inventory and report of institutions.—Every state charitable institution, state hospital, reformatory, house of refuge and industrial school shall file with the comptroller annually, on or before July twentieth, a certified inventory of all articles of maintenance on hand at the close of the preceding fiscal year, stating the kind and amount of each article. Every state charitable institution, state hospital, reformatory, house of refuge, state agricultural experiment station, and the health officer of the port of New York during the continuance of such office, required by law to report annually to the legislature, shall state an inventory of each article of property, stating its kind and amount, except supplies for maintenance, belonging to the state and in their possession on July first of each year. (*Amended by L. 1916, ch. 118.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 20; originally revised from L. 1888, ch. 270, § 1.

§ 21. Rendition of accounts.—The comptroller, from time to time, shall require all public officers and other persons receiving moneys or securities, or having the care and management of any property of the state, of which an account is or is required to be kept in his office, to render statements thereof to him; and all such officers or persons shall render such statements at such time and in such form as he requires, and at all times when required by law. He may require any one presenting to him an account or claim for audit or settlement, to be examined upon oath before him touching such account or claim, as to any facts relating to its

justness or correctness. He may issue a notice to any person receiving moneys of the state for which he does not account or to the legal representatives of such a person, requiring an account and vouchers for the expenditure of such moneys to be rendered at a time to be fixed not less than thirty nor more than ninety days from the date of the service of the notice. Such notice shall be served by delivering a copy thereof to such person or representative or leaving such copy at his usual place of abode; and if such service is made by the sheriff of the county, where the person served resided, the certificate of such sheriff, and if made by any other person, the affidavit of such other person, shall be presumptive evidence of such service.

Source.—Former State Finance L. (L. 1897, ch. 413) § 21; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 2, 3, 19–22.

Auditing expenses of Commission under special act.—Although the Comptroller has the duty to audit expenses of Commissioners under a special act (L. 1912, ch. 541), his judgment and discretion cannot override the judgment and discretion of the Commission. *People ex rel. Heinrich v. Travis* (1916), 175 App. Div. 721, 161 N. Y. Supp. 860, revg. (1916) 96 Misc. 490, 160 N. Y. Supp. 737.

§ 22. Statements of accounts not rendered.—The comptroller shall state an account against every person who receives money belonging to the state for which he does not account when required, charging him with the amount received according to the best information which the comptroller may have in regard thereto, with interest at six per centum per annum from the time when the same was due and payable, and shall deliver a certified copy of such account to the attorney-general for prosecution, and such certified copy shall be presumptive evidence of the indebtedness of such person to the state for the amount stated therein. The person against whom an action is brought by the attorney-general on any such account, shall be liable for and pay the costs of the action whether final judgment therein shall be against him or in his favor, unless he is sued as the representative of the person originally accountable for such moneys.

Source.—Former State Finance L. (L. 1897, ch. 413) § 22; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 23–25.

§ 23. Statements of accounts rendered.—The comptroller shall immediately examine the accounts rendered by every public officer or other person receiving moneys belonging to the state, with the vouchers, and audit, adjust and make a statement thereof. If any necessary vouchers are wanting or defective, he shall give notice to such person to furnish proper vouchers within not less than thirty nor more than ninety days, and at the expiration of such time he shall audit, adjust and make a statement of such accounts on the vouchers and proofs before him. He shall transmit a copy of every account as settled to such persons, and if any balance is stated therein to be due the state, and is not paid to the treasurer within ninety days after its transmission to such person, the

comptroller shall deliver a certified copy of such account to the attorney-general for prosecution. Such certified copy shall be presumptive evidence of the indebtedness of such person to the state for the balance so certified, and if on the trial of any action brought thereon, the defendant gives any evidence other than such as was produced to the comptroller before the statement of such accounts, and by means thereof, the balance so stated is reduced or no balance is found to be due, the defendant shall be liable for and pay the costs of such action.

Source.—Former State Finance L. (L. 1897, ch. 413) § 23; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 26-29.

§ 24. Statement of joint accounts.—The comptroller may, in his discretion, settle separately the accounts of one or more persons receiving moneys of the state for which they are accountable to the state. In such case no person shall plead as a defense to an action brought for a balance certified to be due from him, the non-joinder of any other person, or give in evidence upon the trial thereof the fact that any other person was concerned with him in the receipt or expenditure of such moneys.

Source.—Former State Finance L. (L. 1897, ch. 413) § 24; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 30, 31.

§ 25. Other remedies preserved.—This article does not preclude the state from the enforcement of any other remedy, for the recovery of any debt due or to become due to the state.

Source.—Former State Finance L. (L. 1897, ch. 413) § 25; originally revised from R. S., pt. 1, ch. 8, tit. 3, § 32.

§ 26. Foreclosures of mortgages by the state.—The comptroller shall cause all mortgages belonging to the state upon which default is made in payment of principal or interest, to be foreclosed, whenever, in his judgment, it may be necessary for the protection of the interest of the state. All actions or proceedings for that purpose shall be prosecuted or conducted by the attorney-general.

Source.—Former State Finance L. (L. 1897, ch. 413) § 26; originally revised from R. S., pt. 1, ch. 9, tit. 6, §§ 1-3.

§ 27. When comptroller shall bid in premises.—If on a sale on any such foreclosure, there is not bid and paid or received the amount unpaid on the mortgage, for principal and interest and the costs and expenses of the foreclosure, the comptroller may cause the sale to be postponed and have the value of the premises appraised by two competent and disinterested persons selected by him. If the premises are appraised at a sum equal to or exceeding the amount unpaid to the state, including the costs of the foreclosure and expenses of the appraisal, the comptroller on the sale thereof, shall bid for the state such amount, if necessary to prevent a sale of the premises at a less sum. If the premises are appraised at a sum less than such amount, the comptroller may bid the amount of the

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appraisement and no more. If the premises are struck off for a sum less than such amount, no greater sum shall be credited to the mortgagor or any other person, on account of such sale than the sum bid for the premises sold, deducting therefrom all costs and expenses of the sale and appraisal. The appraisers shall receive a reasonable compensation for their services, to be allowed by the comptroller and paid out of the treasury.

Source.—Former State Finance L. (L. 1897, ch. 413) § 27; originally revised from R. S., pt. 1, ch. 9, tit. 6, §§ 4-8.

§ 28. **Conditions of sale.**—At a sale under such foreclosure the comptroller shall require the purchaser to pay, at the time of the sale, the costs and expenses thereof, and at least one-fourth of the amount so unpaid; and for securing the remainder of the moneys due the state, on the execution of a deed or of the affidavits of sale to the purchaser, he may accept from the purchaser a bond and mortgage to the state on the premises sold, payable in six equal annual installments, with annual interest at six per centum. If the mortgaged premises sell for a greater sum than the amount so unpaid and the costs and expenses of the sale, the comptroller shall also require the purchaser at the time of sale to make payment of such surplus. The expense incurred by the attorney-general in any action or proceeding for the foreclosure of any such mortgage, shall be paid to him out of the treasury.

Source.—Former State Finance L. (L. 1897, ch. 413) § 28; originally revised from R. S., pt. 1, ch. 9, tit. 6, §§ 9-11, 17.

§ 29. **Sale in parcels.**—On any such foreclosure, if any person having title to a part of the mortgaged premises, by conveyance from or through the mortgagor, delivers to the comptroller an affidavit stating that he has such title, and describing with certainty such part, the comptroller on the sale under such foreclosure shall cause to be first sold that part of the mortgaged premises not specified in the affidavit. If the part so sold does not produce enough to satisfy the amount so unpaid and costs and expenses he shall immediately cause such part or parts of the premises as have been conveyed by the mortgagor and described in any such affidavit, to be sold, and if more than one part of such premises has been so conveyed, and an affidavit made as herein required, the comptroller shall cause such parts to be sold in the inverse order of the dates of such conveyances, if it is necessary to sell them, commencing with the part last conveyed by the mortgagor, and such sale shall cease when the proceeds of the sale are sufficient to satisfy the amount so unpaid and such costs and expenses.

Source.—Former State Finance L. (L. 1897, ch. 314) § 29; originally revised from L. 1839, ch. 381, § 1.

Preferences.—Those who hold the earliest conveyances from a mortgagor to the state by filing affidavit required by this section may compel property to be sold in reverse order of alienation, though a party holding under a later conveyance has procured a separate account to be opened respecting his parcel, and has

tendered to the treasurer the amount charged thereon. *Ex parte Merrian* (1847), 4 Denio 254.

§ 30. **Separate accounts for lands purchased or mortgaged.**—The comptroller on application to him for that purpose, shall open an account in his office against any person, for a part or subdivision of a lot of land purchased from or mortgaged to the state, for the proportionate part of the moneys on any such part or subdivision, and thereafter give credit on the several parts or subdivisions, as the persons making payments may require. He may credit any prior payment to a part or subdivision, if such payment appears by satisfactory proof to have been originally intended to be paid on such part or subdivision or by or for the use of the person claiming the credit, whether so expressed in the receipts or not. No part of any such payments shall be applied to the reduction of the principal unpaid on any such part or subdivision, unless the payments exceed the interest, calculated on the principal due on such part, or subdivision, to the day when such part or subdivision is to be paid off, or a new account opened therefor. If separate receipts be given by the treasurer, for any payments which are claimed to be credited to the account of any such part or subdivision, the receipts shall be delivered to the comptroller and filed in his office. Separate accounts shall not be opened under this section unless a map and survey of the whole lot is filed with the comptroller, showing particularly the part or subdivision for which such account is to be opened, and satisfactory proof furnished the comptroller that the residue of the lot is sufficient security for the sum remaining unpaid thereon.

Source.—Former State Finance L. (L. 1897, ch. 314) § 30; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 33–35, 40.

§ 31. **Discharge of mortgages by the state.**—The treasurer's receipt, countersigned by the comptroller, setting forth that the whole sum secured by the mortgage held by the state has been paid, shall be a sufficient discharge of the mortgage, and the officer in whose office such mortgage is recorded shall record such receipt as a satisfaction of the mortgage and satisfy the mortgage of record. When any part or subdivision of any lot mortgaged to or purchased from the state, for which a separate account has been opened, is paid, the comptroller shall execute a discharge of such part or subdivision from such mortgage.

If a map and survey of the whole lot is filed with the comptroller showing particularly a part or subdivision for which no separate account has been opened, and the owner thereof pays into the treasury its full proportion of principal and interest unpaid, and satisfactory proof is furnished the comptroller that the residue of the lot is sufficient security for the sum remaining unpaid, he may execute a like discharge of such part or subdivision.

Source.—Former State Finance L. (L. 1897, ch. 413) § 31; originally revised from R. S., pt. 1, ch. 8, tit. 3, §§ 36-39.

§ 32. **Surplus moneys on sale of lands mortgaged to the state.**—If real property mortgaged to the state, or purchased for the benefit of the state, or for which a certificate has been given to a former purchaser, is sold by the comptroller, state engineer or the commissioners of the land office for a greater sum than the amount due to the state, with the costs and expenses of the foreclosure or resale, the surplus moneys received into the treasury after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure or of the forfeiture of the original contract. On a sale of such real property by the comptroller, the state engineer or the commissioners of the land office, the comptroller shall give credit to the mortgagor on his bond or to the original purchaser on his contract, for the amount at which such property has been sold, after deducting therefrom all the costs, charges and expenses of the sale. If interfering claims to such surplus moneys be made, they shall be referred by the comptroller to the attorney-general, whose decision as to the rights of the respective claimants shall be final and conclusive as to any claim against the state. The comptroller shall not draw his warrant for any moneys authorized by this section to be refunded, except on satisfactory proof, by affidavit or otherwise, of the legal right of the person in whose favor such warrant is applied for.

Source.—Former State Finance L. (L. 1897, ch. 413) § 32; originally revised from R. S., pt. 1, ch. 8, tit. 8, §§ 10-12. These sections were inadvertently repealed by the Executive Law (L. 1892, ch. 683). See Report of Statutory Revision Commission, 1897.

§ 33. **Assignments of mortgages; releases from judgments.**—The comptroller, on the written request of the owner in actual possession of real property mortgaged to the state, may assign such mortgage, with the bond or other instrument accompanying the same, on payment into the treasury of the amount of principal and interest unpaid on such mortgage. The comptroller, with the consent of the attorney-general, if satisfied that the interests of the state will not be prejudiced thereby, may release any portion of any real property subject to a judgment in favor of the people of the state from the lien created by such judgment.

Source.—Former State Finance L. (L. 1897, ch. 413) § 33; originally revised from R. S., pt. 1, ch. 8, tit. 3, § 41; Id. tit. 8, §§ 6, 9. The latter sections were inadvertently repealed by the Executive Law (L. 1892, ch. 683). See report of Statutory Revision Commission, 1897.

§ 34. **Compromise of old judgments and debts.**—The attorney-general and comptroller, or either of them, may acknowledge satisfaction of judgment in favor of the people of the state when the same is settled or discharged. The comptroller, with the approval of the attorney-general,

may compromise, settle, release and discharge any judgment or contract debt not in judgment in favor of the state, after the lapse of ten years since the recovery of the judgment, or since the debt became due, on such terms as the comptroller and attorney-general deem for the best interest of the state.

Source.—Former State Finance L. (L. 1897, ch. 314) § 34; originally revised from R. S., pt. 1, ch. 8, § 9; L. 1878, ch. 291.

§ 35. **Indebtedness not to be contracted without appropriation.**—A state officer, employee, board, department or commission shall not contract indebtedness on behalf of the state, nor assume to bind the state, in an amount in excess of money appropriated or otherwise lawfully available.

Source.—Former State Finance L. (L. 1897, ch. 413) § 35; as added by L. 1899, ch. 580.

L. 1909, ch. 447, sec. 2, specifically authorizes the entering into such a contract as is prohibited by this section and therefore to that extent supersedes this general provision. Rept. of Atty. Genl. (1910) 743.

Application of section.—A contract with a railroad as to changes in grade crossings and additional tracks made by the board of managers of the State Industrial School at Industry which does not contain a clause to the effect that the "contract should be deemed executory to the extent of money available," should be disapproved. Rept. of Atty. Genl. (1910) 604.

Board of Railroad Commissioners may determine necessity of change in crossing, even though state money is not available. Rept. of Atty. Genl. (1904) 248.

The highway commission may readvertise and complete roads and claim the excess cost from the contractor even though the cost of completion exceeds the amount appropriated. Rept. of Atty. Genl. (1909) 216.

The superintendent of public works is not authorized to exceed appropriation for doing certain work under a special act. Rept. of Atty. Genl. (1908) 477.

Although a contract may not be entered into in excess of an appropriation available, work may be done by day's labor without contract, where the appropriation is not exceeded. Rept. of Atty. Genl. (1911) 193.

A specific appropriation having been made to cover the traveling expenses of assistant superintendents of public works, they may not on the exhaustion of this fund be paid out of the funds provided pursuant to the provisions of the Barge Canal Law. Rept. of Atty. Genl. (1912) 551.

Under this section and L. 1916, ch. 594, creating the new prisons commission, said commission has no authority to issue State bonds for the purpose of constructing prisons. Atty. Genl. Opinion (1917), 10 State Dept. Rep. 495.

Right of state officers to make contract of indemnity.—The managers of a State institution in making a contract with a railroad company for the construction and maintenance of a siding may not agree to assume any risk of loss caused by the operation of the siding. Rept. of Atty. Genl. (1913) 654.

Employment of counsel by attorney-general.—The provisions of this section do not limit the power of the Attorney-General under section 65 of the Executive Law to employ counsel necessary to assist in the transaction of legal business. Kirby v. State of New York (1910), 68 Misc. 626, 125 N. Y. Supp. 742.

Contracts may be let for the erection of buildings at a state school of agriculture previous to the time the appropriation therefor is available. But the contract should stipulate that no liability for payment is assumed until the appropriation takes effect. Rept. of Atty. Genl. (1912) 544.

Powers of state fair commission in awarding contract for new building on state

fair grounds.—The State Fair Commission has the power to execute a contract with firms offering the lowest bids for the construction and equipment of a new building on the State Fair Grounds, if said bids and the architect's fees which are payable out of the sum appropriated exceed the appropriation, provided the architect waives his right to the payment of his fees unless an appropriation therefor is subsequently made by the Legislature. The commission can authorize the construction of additional items which were not included in said bids, although the cost thereof makes the total cost of construction and equipment exceed the appropriation, if the contractor agrees to waive his compensation therefor unless an appropriation to pay the same is subsequently made by the Legislature. Rept. of Atty. Genl. (1913) 461.

Bridge at Amsterdam over barge canal; part construction by city; proposed deposit of city bonds in lieu of cash.—State officers are not authorized to accept city bonds in lieu of cash and by future sales of such bonds raise the money necessary to meet the city's share of progress payments on a State contract to construct a road bridge over the Barge canal. Rept. of Atty. Genl. (1914) 84.

Violation of section; relief from.—Where the indebtedness exceeds the appropriation, and a subsequent appropriation is made to meet this excess, the officer is relieved from any violation of this section. Rept. of Atty. Genl. (1900) 183.

While the state has placed limits upon the authority of its officers to contract and incur indebtedness on its behalf, it may nevertheless ratify any of their acts whenever their acts are not void under the Constitution. *Carroll v. State of New York* (1910), 68 Misc. 41, 124 N. Y. Supp. 888.

§ 36. Specific appropriation not to be used for other purposes; items for certain purposes required to be specific.—Money appropriated for a specific purpose shall not be used for any other purpose; and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated. The comptroller shall not audit any claim for salary, labor or wages, unless an appropriation applicable thereto has been already made specifying the amount thereof appropriated for such purpose.

The comptroller shall not audit any claim or account or draw a warrant for the payment of moneys for the purchase of an automobile adapted and intended primarily for the carrying of passengers, or the rent thereof, for such purpose, for a period longer than ten days, unless moneys are specifically appropriated therefor; and an appropriation for expenses for any officer, board or commission or for any department under the state government, or in connection with the prosecution of any object or purpose, which does not in express terms include the purchase of such an automobile or automobiles shall not be held to authorize the comptroller to audit any such claim or account or draw a warrant for the payment thereof. (*Amended by L. 1915, ch. 669, and L. 1916, ch. 392.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 36, as added by L. 1899, ch. 580.

Application.—It is within the power of the State Comptroller to refuse to allow the claims of employees of the Health Officer of the Port of New York for uni-

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forms out of the appropriation for that department made by the Legislature for the fiscal year of 1911 in chapter 810 of the laws of that year. Rept. of Atty. Genl. (1912) 370.

The erection of a permanent memorial to Oliver Hazard Perry, of an appropriate character, in commemoration of the Battle of Lake Erie, in the city of Buffalo, is authorized under chapter 190 of the Laws of 1913, provided the Perry's Victory Centennial Commission in the exercise of its administrative discretion duly determines that as a fitting method of participating in the celebration of such event. Rept. of Atty. Genl. (1913) 368.

Premium upon surety bond of deputy sheriff, appointed at the request of an industrial school, is not a proper charge upon the maintenance fund of such school. Rept. of Atty. Genl. (1911) 394.

Money for "books, binding and supplies for Supreme Court Law libraries" can not be used for insurance upon such libraries. Rept. of Atty. Genl. (1915) 134.

The Highway Commission cannot, in its discretion, use funds appropriated by the Legislature, for the construction of roads along specific routes, for other roads, and apply other funds appropriated for the same general purpose to the specific routes, except by legislative authority. Opinion of Atty. Genl. (1913) 152.

The money derived from the sale of bonds provided for by chapter 298 of the Laws of 1912, can only be used for the purposes therein specified and must be apportioned among the counties of the state as in the chapter provided. The chapter including the method of apportionment having been adopted by a vote of the People, the Legislature has no power to reapportion the funds, or any portion thereof. Opinion of Atty. Genl. (1913) 54.

§ 37. **Payments to state treasurer.**—After this section as amended takes effect every state officer, employee, board, department or commission receiving money for or on behalf of the state from fees, penalties, costs, fines, sales of property or otherwise, shall on the fifth day of each month pay to the state treasurer all such money received during the preceding month and on the same day file a detailed, verified statement of such receipts with the comptroller, who shall keep an account thereof in his office. This section shall not apply to the manufacturing fund of the state prisons known as the capital fund, nor to the receipts of the manufacturing departments of the state hospitals for the insane, nor to the convict deposit and miscellaneous earning fund of the state prisons, nor to the working capital fund of the state commission for the blind, nor to moneys received by such commission by gift or bequest, nor to the capital fund of the state reservation at Saratoga Springs. This section, as amended, shall be deemed to supersede any other provision of this chapter or of any other general or special law inconsistent therewith. (*Amended by L. 1910, ch. 440, L. 1912, ch. 162, L. 1915, ch. 216, L. 1916, ch. 223, and L. 1917, ch. 468, in effect July 1, 1917.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 37, as added by L. 1899, ch. 580, amended by L. 1900, ch. 326; L. 1901, ch. 457, and L. 1907, ch. 561.

Reenacted in 1917 to bring the entire section down to date and supersede general laws enacted subsequent to the original enactment of the section. See Rept. of Atty. Genl. (1915) 396.

Since the amendment of 1915 funds derived from the sale of military and naval property, fines and penalties, unexpended balances to the credit of disbanded or-

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ganizations, and accrued interest on the military fund, should be deposited in the state treasury, notwithstanding the fact that sections 16, 142, 225 and 226 of the Military Law contemplate other disposition. Atty. Genl. Opin. (1916), 6 State Dep. Rep. 473.

Section 10 of L. 1913, chap. 415, is inconsistent with the provisions of this section of the Finance Law, as amended by L. 1915, chap. 216, and the State Commission for the Blind is required by said section as amended, to pay moneys received from the sale of its products into the State Treasury. Atty. Genl. Opin. (1915), 5 State Dep. Rep. 543.

The word "employee" as used in this section is not intended to mean a contractor performing work for the state. Rept. of Atty. Genl. (1910) 610.

Application.—License fees collected from immigrant lodging-places, pursuant to § 156-a of the Labor Law, should only be paid out after an appropriation definite in amount. Rept. of Atty. Genl. (1912) 1.

This section does not apply to the military organization of the state. Rept. of Atty. Genl. (1910) 599.

The provisions of this section are not sufficiently broad to permit a state officer to sell public property in his custody or under his control. The legislature may provide means for disposal of such property. Rept. of Atty. Genl. (1911) 148.

Provisions of this section apply to the New York Agricultural Experiment Station. Rept. of Atty. Genl. (1899) 273.

Moneys received by state institutions for support of state pupils should be paid over to the state treasurer monthly. Rept. of Atty. Genl. (1899) 303.

Matteawan State Hospital need not deposit monthly moneys received from sources other than the state. Rept. of Atty. Genl. (1901) 191.

Moneys received by teacher in the Department of Agriculture of Cornell University, as tuition of foreign pupils, need not be paid over. Rept. of Atty. Genl. (1899) 327.

Reformatory for Juvenile Delinquents need not pay over money received from sources other than the state, but must account for the same to the state comptroller. Rept. of Atty. Genl. (1900) 262.

Use of pension moneys, by board of managers of Woman's Relief Corps Home for extra help is unlawful. Rept. of Atty. Genl. (1905) 391.

Costs including expenses taxed and collected in actions of foreclosure of United States deposit fund mortgages, should be paid in to the State treasury, and an account kept thereof, pursuant to this section, and if such proceeds are insufficient to pay all the costs and expenses and the amount due on the mortgage debt, the deficiency should be borne by the trust funds. Atty. Gen. Opin. (1917), 10 State Dept. Rep. 499.

Expenditure of fees by health officer of port of New York.—The health officer of the port of New York may, with the approval of the Governor in the case of an emergency, expend such portion of the fees collected by him as are necessary, notwithstanding the provision of this section that he turn over such fees on the 5th day of each month. Atty. Genl. Opin. (1915), 5 State Dept. Rep. 545.

Moneys received by state hospitals must be paid into the State Treasury and cannot be retained to cover disbursements by such institution. Rept. of Atty. Genl. (1911) 483.

Moneys received by inmates from pension funds and donations made by individuals for the entertainment of the inmates, need not be turned into the State Treasury. Rept. of Atty. Genl. (1911) 353.

Stock upon a state farm cannot be traded or exchanged for other stock; but, if unfit for use may be sold. Rept. of Atty. Genl. (1915) 111.

The State Fair Commission is not subject to the provisions of this section re-

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quiring monthly payments of all balances to the State Treasurer. Rept. of Atty. Genl. (1915) 174; Rept. of Atty. Genl. (1910) 401.

Excess fees may be returned by the Secretary of State by his check. Rept. of Atty. Genl. (1911) 116.

§ 38. **Contracts in pursuance of appropriations.**—A contract or contracts made in pursuance of an appropriation by the state for a specific object shall be for the completion of the work contemplated by the appropriation, and in the aggregate shall not exceed the amount of such appropriation. A contract for a part of such work shall not be binding upon the state until contracts are also made covering the entire work contemplated by such appropriation, except where it is expressly provided by such appropriation that a part of the work may be done by day's labor. Every such contract shall be accompanied by a bond for the completion of the work specified in the contract, within the amount stipulated therein, which bond shall be filed in the office of the state comptroller.

Source.—Former State Finance L. (L. 1897, ch. 413) § 38, as added by L. 1899, ch. 479.

§ 39. **Acceptance of trusts by comptroller.**—The state comptroller may accept and hold in behalf of the state, if for the public interest, a gift, devise or bequest to the state of New York, heretofore or hereafter made in trust, for the support of the common and union free schools of the state or of any school district or municipality therein. He shall cause such gift, devise or bequest to be kept as a distinct fund, and shall invest the same in the stocks and bonds of the United States or of this state, for the payment of which the faith and credit of the United States or of this state are pledged, or in the stocks or bonds of any county, town, city, village or school district of the state authorized by law to be issued. The comptroller shall annually pay the income thereof to the commissioner of education, who shall cause such income to be distributed in accordance with the terms of such gift, devise or bequest.

Source.—Former State Finance L. (L. 1897, ch. 413) § 39, as added by L. 1902, ch. 59.

§ 40. **Gifts to the state of obligations of another state; how held.**—Whenever any person or persons, copartnership, corporation or association shall give, bequeath or assign to the state of New York any bonds, warrants, choses in action or other obligations of any other state, the governor is hereby authorized in his discretion, to receive and accept the same for the benefit of the state and the right and title thereto and therein shall thereupon pass to and vest in this state and the same and all the proceeds thereof when collected shall be held by the comptroller in a special account or fund subject to be appropriated by the legislature only for the support of common schools, or for the promotion of some educational interest in the state.

Whenever it shall be necessary to protect or assert the right or title of the state to any such bonds, warrants, choses in action or other obligations so received, or to collect or enforce the same or any part thereof, principal or interest, the attorney-general is hereby authorized and directed to take the necessary and proper proceedings or to bring suit thereon in the name of the state in any court of competent jurisdiction, state or federal, and to prosecute all such suits or proceedings to a termination.

Source.—L. 1905, ch. 388, §§ 1-2.

§ 41. **Estimates for purchase of staple articles of supplies.**—Whenever the superintendent, agent and warden or other managing officer of a state institution is required by law to submit to any state commission, department or officer, an estimate of the expense required for such institution during any subsequent period, such estimate may, if authorized by the commission, department or officer whose duty it is to revise the same, and if such authorization be approved by the comptroller, include an amount sufficient for the purchase of certain staple articles or supplies for the use of such institution for a period beyond that for which such estimate is ordinarily made.

Source.—Former State Finance L. (L. 1897, ch. 413) § 40, as added by L. 1904, ch. 448.

§ 42. **State raised products to be preferred.**—The officers, boards, commissions and departments whose duty it is to purchase supplies for the maintenance of inmates in state institutions, shall, in purchasing such supplies, give preference to products raised within the state, price and quality being equal.

Source.—L. 1899, ch. 32, § 1.

§ 42-a. **Emergency relief by state institutions during a state of war.**—During the present war the state department, board, commission or officer having jurisdiction and control of the administration of any state institution, state asylum, state hospital, state prison or reformatory, with the approval of the governor and state comptroller, may loan to or set aside for the temporary use of the United States government or the government of the state of New York, or of any department of the United States or of the state of New York, or of any relief or preparedness organization, such accommodations or supplies of such institution, and may utilize such of the labor of the inmates or employees of such institution, as is practicable, to meet the temporary emergency. (*Added by L. 1917, ch. 596, in effect May 21, 1917.*)

§ 43. **State contracts not to be assigned without consent; penalties if done.**—A clause shall be inserted in all specifications or contracts hereafter made or awarded by the state, or any public department or official thereof, prohibiting any contractor, to whom any contract shall be let, granted or awarded, as required by law, from assigning, transferring, conveying,

subletting or otherwise disposing of the same, or of his right, title or interest therein, or his power to execute such contract to any other person, company or corporation, without the previous consent in writing of the department or official awarding the same.

If any contractor, to whom any contract is hereafter let, granted or awarded, as required by law, by the state, or by any public department or official thereof, shall, without the previous written consent specified in the first paragraph of this section, assign, transfer, convey, sublet or otherwise dispose of the same, or his right, title or interest therein, or his power to execute such contract, to any other person, company or other corporation, the state, public department or official, as the case may be, which let, made, granted or awarded said contract, shall revoke and annul such contract, and the state, public department or officer, as the case may be, shall be relieved and discharged from any and all liability and obligations growing out of said contract to such contractor, and to the person, company, or corporation to whom he shall assign, transfer, convey, sublet or otherwise dispose of the same, and said contractor, and his assignee, transferee, or sub-lessee, shall forfeit and lose all moneys, theretofore earned under said contract except so much as may be required to pay his employees; provided that nothing herein contained shall be construed to hinder, prevent or affect an assignment by such contractor for the benefit of his creditors, made pursuant to the statutes of this state.

Source.—L. 1897, ch. 444, §§ 1-2.

As to covenant substantially in the form required by statute prohibiting assignment and subletting of public contracts, see *Gordon v. Ashley* (1908), 191 N. Y. 186, 83 N. E. 686, revg. (1906), 114 App. Div. 908, 100 N. Y. Supp. 1118.

§ 43-a. **Retained percentages may be withdrawn.**—A clause may be inserted in any contract hereafter made or awarded by the state, or by any public department or official thereof, provided that the contractor may, from time to time, withdraw the whole or any portion of the amount retained from payments to the contractor pursuant to the terms of the contract, upon depositing with the state comptroller securities of a market value equal to the amount so withdrawn, said securities to be of a character in which the savings banks of the state of New York are authorized by law to invest moneys. The said clause may further provide that the state comptroller shall, from time to time, collect all interest or income on the securities so deposited, and shall pay the same, when and as collected, to the contractor who deposited the securities. The said clause may further provide that if the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the contractor. The said clause may further provide that the contractor shall not be entitled to interest or coupons or income on any of the deposited securities, the proceeds of which shall be used or applied by the state, or by any public department or official thereof, pursuant to the terms of the contract. (*Added by L. 1916, ch. 176.*)

§ 44. When money paid into court to be paid to state treasurer.—Whenever any sum of money, paid into court, shall have remained in the hands of any county treasurer, or of the chamberlain of the city of New York, for the period of twenty years, it shall be paid over by such officer with all accumulations of interest thereon, after deducting his legal fees, to the treasurer of the state of New York. The said treasurer shall pay such sum to the owner or owners thereof upon the presentation to him of the warrant of the comptroller therefor. The comptroller shall draw his warrant for such sum upon the presentation to him of an order of the court made in accordance with section seven hundred and fifty-one of the code of civil procedure and upon due notice to said comptroller.

Source.—L. 1892, ch. 651, § 9.

Application.—The provision of this section requiring funds paid into court to be turned over to the State Treasurer after twenty years applies only where there are or may be known or ascertainable claimants. It does not apply to funds the sources of which cannot be traced. *Matter of Stevenson* (1910), 137 App. Div. 789, 122 N. Y. Supp. 664; *Matter of City of New York* (1910), 137 App. Div. 803, 122 N. Y. Supp. 656, *revd. on other grounds* (1910), 200 N. Y. 138, 93 N. E. 689.

Moneys unclaimed only included.—The section applies only to moneys which have remained unclaimed for a period of twenty years or more, and the state is not entitled to have all of the moneys paid into court which have remained in the hands of the chamberlain or county treasurer for a period of twenty years or more, together with the accumulation of interests thereon, paid over to the treasurer of the state, and this irrespective of whether such moneys have or have not been claimed. And where an order is served directing such payment, the chamberlain or county treasurer is entitled to have proof taken as to whether such money has remained unclaimed during the period specified. *People v. Keenan* (1909), 132 App. Div. 331, 117 N. Y. Supp. 42.

Balances of intestate assets remaining in the hands of the city chamberlain of New York City for twenty years, should be turned over to the State Treasurer. Upon the failure of next of kin, the State and not the city succeeds to personal property of intestates. *Atty. Gen. Opin.* (1917), 10 State Dept. Rep. 510.

§ 45. Public accounts to be kept in dollars, dimes and cents.—All accounts and other computations of money in the treasury and other public offices, whether state or local, shall be kept and made out, in the money of account of the United States, that is to say: in dollars or units, dimes or tenths, cents or hundredths, mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

Source.—R. S., pt. 1, ch. 19, tit. 3, § 1.

§ 46. Certain expenses shall be state charges.—The following expenses shall be payable out of the treasury of the state:

1. The expense of the publication of an appointment or revocation of an appointment by the governor changing the place of holding a term of a court of record, pursuant to section eight of the judiciary law.

2. The expenses of publication of an appointment of a term or terms

of an appellate division, pursuant to section thirty-three of the executive law.

3. The expense of the publication of appointments of terms of the supreme court, pursuant to section thirty-three of the executive law.

4. The expense of printing the copies of the calendars for the terms of the appellate division of the supreme court, to be audited by the comptroller.

5. Where the fees or other charges of an officer are chargeable to the state, they must be audited by the comptroller, and paid on his warrant, except as otherwise specially prescribed by law.

Source.—Code Civ. Pro. § 20, as amended by L. 1899, ch. 523; Id. § 39; Id. § 226, as amended by L. 1895, ch. 946; Id. § 3295.

Publication in local newspaper cannot be ordered by a special term of the supreme court, and the board of supervisors of a county cannot be compelled to audit a claim therefor. *People ex rel. Cole v. Supervisors of Greene* (1886), 39 Hun 299; *People ex rel. Cole v. Hill* (1885), 36 Hun 619.

§ 47. **Annual reports to legislature by institutions entitled to receive money from state.**—All institutions and societies entitled by law to receive money from the state shall make an annual report to the legislature on or before the fifteenth day of January in each year, and no such money shall be paid in any such case until such report is made.

Source.—L. 1869, ch. 645, § 3.

§ 48. **Statement of desired appropriations to be filed with comptroller.**—On or before November fifteenth in each year there shall be filed with the comptroller by each state officer, head of department, or proper officer of each state hospital, asylum, charitable or reformatory institution, the state commission in lunacy, the state board of charities, the state department of health, the forest, fish and game commission, and all other state commissions, commissioners and boards, now existing or hereafter constituted, a statement in detail of all moneys, together with the reasons therefor, for which any general or special appropriation is desired at the ensuing session of the legislature by such state officer, department, commission, commissioners and boards. The comptroller may also, from time to time, and in his discretion, require any such state officers, departments, commissions, commissioners or boards to report to him as to such other fiscal affairs as the comptroller shall deem necessary for the proper compilation of the tabulation provided for by section forty-nine of this chapter. The comptroller shall also receive and file in his office a statement of any desired appropriation for any purpose which may be presented to him on or before November fifteenth in each year by any individual, corporation or association, including municipal corporations intending to present the same at the ensuing session of the legislature. Each of the reports and statements of desired appropriations thus made shall be in a form to be prescribed by the comptroller. The reports and

statements of desired appropriations hereinbefore provided for shall be public records. (*Added by L. 1910, ch. 149.*)

§ 49. Duty of comptroller as to tabulation of statements.—On or before December fifteenth in each year the comptroller shall make a tabulation of such statements and reports, provided for by section forty-eight of this chapter, in printed form, accompanied by comparative data and estimates of income, together with such comments and a statement of such other matters as he shall deem necessary and proper for the full comprehension of such tabulation, and shall transmit such tabulation to the governor immediately and to the legislature on the first day of its next session. Such tabulation so transmitted shall also contain a statement of all moneys required by the comptroller, * together with the reasons therefor, for which any general or special appropriation is desired by him at the ensuing session of the legislature, together with such comparative and other data as the comptroller shall deem necessary and proper for the full comprehension of such last mentioned statement. (*Added by L. 1910, ch. 149.*)

§ 50. Separate specifications for contract work for the state.—Every officer, board, department, commission or commissioners charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or alteration of buildings for the state, when the entire cost of such work shall exceed one thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed:

1. Plumbing and gas fitting.
2. Steam heating, hot water and ventilating apparatus.

Such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the state, or a department, board, commission, commissioner or office thereof, for the erection, construction or alteration of buildings or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations. Nothing in this section shall be construed to prevent the authorities in charge of any state building from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof. (*Added by L. 1912, ch. 514.*)

Reference.—Similar provision as to contracts for work for municipalities, General Municipal Law, § 88.

§ 51. Workmen's compensation insurance on public works.—Each contract to which the state, any public department or official thereof, or a commission appointed pursuant to law is a party and which is of such a

* So in original.

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character that the employees engaged thereon are required to be insured by the provisions of chapter forty-one of the laws of nineteen hundred and fourteen, known as the workmen's compensation law, and acts amendatory thereto, shall contain a stipulation that the same shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of said law. (*Added by L. 1916, ch. 478.*)

ARTICLE III.

GENERAL FUND.

Section 55. General fund.

56. Payments out of the general fund.

§ 55. General fund.—The stocks, debts and other property known as the general fund of this state, the income and revenues thereof, and the additions which may be made thereto, shall continue to be known as the general fund. All money paid into the treasury of the state, not belonging to any specific fund established by law, belongs to and is part of the general fund, and the comptroller is hereby authorized to transfer from the general fund to the free school fund and the canal fund the amount of appropriations made by the legislature payable from such funds and to transfer such amounts as shall be necessary to keep intact the various funds of the state.

Source.—Former State Finance L. (L. 1897, ch. 413) § 50, as amended by L. 1902, ch. 366, § 2; originally revised from R. S., pt. 1, ch. 9, tit. 1, §§ 1-3.

§ 56. Payments out of the general fund.—All moneys authorized by law to be paid out of the treasury of the state and not payable from any specific fund established by law shall be paid out of the general fund.

Source.—Former State Finance L. (L. 1897, ch. 413) § 51; originally revised from R. S., pt. 1, ch. 9, tit. 1, § 16.

ARTICLE IV.

CANAL FUNDS.

Section 60. Canal fund.

61. Commissioners of the canal fund.

62. Deposit of funds.

63. Charges on the canal fund.

64. Rules and regulations.

65. When money may be borrowed for the canal fund.

§ 60. Canal fund.—The canal fund shall continue to consist of the following property:

1. Real property granted for the construction of the canals, by the state, by companies or by individuals, and remaining unsold.
2. Debts due for portions of such real property heretofore sold.
3. All moneys received from the sale or use of the surplus waters of any canal.
4. All moneys recovered in suits for penalties or damages instituted under the canal law.
5. All moneys required by law to be paid into the canal fund.

Source.—Former State Finance L. (L. 1897, ch. 413) § 60; originally revised from R. S., pt. 1, ch. 9, tit. 2, § 1, subds. 1, 6 and 7.

Section cited.—Matter of Carnegie Trust Co. (1912), 206 N. Y. 390, 395, 99 N. E. 1096, 46 L. R. A. (N. S.) 260.

§ 61. Commissioners of the canal fund.—The canal fund and the canal debt sinking fund shall continue to be superintended and managed by the commissioners of the canal fund, a majority of whom, including the comptroller, shall be a quorum for the transaction of business. The care and disposition of all lands belonging to the canal fund shall be vested in the commissioners of the land office. Investments for the canal fund and the canal debt sinking fund shall be made by the comptroller, subject to the approval of the commissioners of the canal fund, in the securities in which he is authorized by law to invest the other funds of the state.

Source.—Former State Finance L. (L. 1897, ch. 413) § 61; originally revised from R. S., pt. 1, ch. 9, tit. 2, § 4; L. 1887, ch. 245, (last clause of § 1).

§ 62. Deposit of funds.—The commissioners of the canal fund may deposit the moneys belonging to such fund, or the canal debt sinking fund, with any safe incorporated moneyed institution or banking association in this state, and may make such contracts therewith for the interest on and the duration of such deposits as will best promote the interest of the funds. They may require security for the deposit of such moneys by surety undertaking or a deposit of bonds issued by the state of New York in the same manner as is provided by section eight of article two of this chapter from depositories of other state moneys.

Source.—Former State Finance L. (L. 1897, ch. 413) § 62, as amended by L. 1905, ch. 372; originally revised from L. 1831, ch. 286, § 1.

Determination of the amount of the canal fund to be deposited in banks must be made by the commissioners of the canal fund as a body; they cannot delegate such duty to the state comptroller and state treasurer. Rept. of Atty. Genl. (1909) 492.

Bond of state depositories.—Banking institutions designated as depositories of state moneys may give one bond as security for deposits of both general and canal funds to be filed with the state treasurer. Rept. of Atty. Genl. (1910) 577.

Subrogation of surety of depositary State funds to State's right of a preference; preference as to accrued interest; waiver.—A surety of an authorized depositary of State funds, which has paid to the State the amount of its undertaking, is entitled upon the liquidation of the depositary to be subrogated to the State's

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right of a preference over general creditors. But such surety is not entitled to a preference for the accrued interest upon the sum paid by it since the date of payment. The surety did not waive its right to a preference by failing to claim the same until after the Court of Appeals had decided that the State was entitled thereto. *United States Fidelity and Guaranty Co. v. Carnegie Trust Co.* (1914), 161 App. Div. 429, 146 N. Y. Supp. 804, *affd.* (1914), 213 N. Y. 629, 107 N. E. 1087; *Same v. Borough Bank* (1914), 161 App. Div. 479, 146 N. Y. Supp. 870, *affd.* (1914), 213 N. Y. 628, 107 N. E. 1086.

§ 63. **Charges on the canal fund.**—All moneys expended in the construction, repair or improvement of the canals now authorized by law, or allowed or expended by the commissioners of the canal fund, or the superintendent of public works or other officer or assistant employed on such canals pursuant to law, with the compensation of such officers respectively, including the salary of the superintendent of public works, shall be charged to the canal fund unless otherwise expressly provided by law. The comptroller shall also charge to such fund from time to time so much for the services of the clerks in his office, devoted to the accounts and revenues of the canals, as in his opinion is just, and he is hereby authorized in his discretion to transfer from time to time such amounts of the surplus of canal fund to the general fund as may not be needed to meet the expenses incident to the maintenance and repair of canals. (*Amended by L. 1913, ch. 267.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 63; originally revised from R. S., pt. 1, ch. 9, tit. 2, § 13.

Consolidators' note.—Words "to such fund" inserted for definiteness.

§ 64. **Rules and regulations.**—The commissioners of the canal fund from time to time, shall prescribe such rules and regulations relative to the transfer of all or any of the public stocks of this state, constituting the debt known as the canal debt, and the division and consolidation of the certificates thereof, as they think advisable. They may require such returns to be made to the comptroller by the officer or person authorized by law to transfer such stocks, and pay the interest on any loan, as they deem reasonable.

Source.—Former State Finance L. (L. 1897, ch. 413) § 64; originally revised from L. 1830, ch. 242.

§ 65. **When money may be borrowed for the canal fund.**—If the legislature, the canal board, the commissioners of the canal fund or the superintendent of public works, lawfully authorize or require the payment of any sum of money out of the canal fund, for any purpose connected with canal expenditures, and there is not money in such fund applicable to such purpose, the commissioners of the canal fund may borrow such sum of money, payable in such time not exceeding eighteen years, and bearing such rate of interest not exceeding five per centum, as they deem most beneficial to the interests of the state, and the comptroller may issue bonds therefor in the manner provided by law.

Source.—Former State Finance L. (L. 1897, ch. 413) § 65; originally revised from L. 1849, ch. 228.

ARTICLE V.

[Article amended throughout by L. 1911, ch. 634.]

EDUCATION FUND.

Section 80. The education fund.

81. Investments.
82. United States deposit fund.
83. Discharge and cancellation of mortgages.
84. Books and records.
85. Supervision of existing United States deposit fund mortgages.
86. Release of part of premises.
87. Power of comptroller to maintain actions.
88. Foreclosure of United States deposit fund mortgages.
89. Disposition of surplus moneys; principal to be deposited.
90. Supervision of lands.
91. Audit of loan commissioners' accounts.
92. Certified copy of original mortgage.
93. Payments to Cornell University on account of the college land script fund.

§ 80. The education fund.—The common school fund, the literature fund, and the United States deposit fund, shall continue to consist of all moneys, securities or other property in the treasury of the state, or under the control of any state officer, and of all debts due the state, or real property owned by it, belonging to such funds. The proceeds of all lands which belonged to the state on January first, eighteen hundred and twenty-three, except the parts thereof reserved or appropriated to public use, or ceded to the United States, shall belong to the common school fund. In case of any diminution of capital belonging to the common school fund, United States deposit fund or literature fund, there shall be transferred to the capital of such fund or funds from the income thereof so much as may be necessary to preserve the capital inviolate. Of the income of the United States deposit fund, twenty-five thousand dollars shall annually be added to the capital of the common school fund. It shall be the duty of the comptroller, at the close of each fiscal year, to transfer to the general fund the remainder of the income of the common school fund, United States deposit fund and literature fund, which together with such amounts as may be raised or received by taxation or otherwise for educational purposes, shall constitute the education fund, and appropriations therefrom may be made annually for the support of the educational system of the state, to be apportioned by the commissioner of education in the manner provided by law, which apportionment shall be certified by the commissioner of education to the comptroller for distribution and payment. The amount appropriated by the legislature for the support and maintenance

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of the common school system of the state shall be payable from the treasury upon the warrant of the comptroller, and the comptroller shall countersign and enter all checks drawn by the treasurer in payment of his warrants, and all receipts of the treasurer for such payments paid to the treasurer, and no such receipts shall be evidence of payment unless they be so countersigned. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 80, as amended by L. 1904, ch. 225, and L. 1905, ch. 587.

References.—Apportionment of public money for public schools and academies, Education Law, §§ 490–502.

§ 81. **Investments.**—The comptroller shall invest and keep invested all moneys belonging to the common school, literature and United States deposit funds in the stocks and bonds of the United States and of this state, or for the payment of which the faith and credit of the United States or of this state are pledged, or in the judgments or awards of the court of claims of the state, or in the stocks or bonds of any county, town, city, village or school district of the state authorized to be issued by law. The comptroller, whenever he deems it for the best interest of such funds, or either of them, may dispose of any of the securities therein or investments therefor, in making other investments authorized by law, and he may exchange any such securities for those held in any other of such funds, and the comptroller may draw his warrant upon the treasurer for the amount required for such investments and exchanges. The care and disposition of all lands belonging to the literature fund and the common school fund shall be vested in the commissioners of the land office. (*Amended by L. 1910, ch. 201, and L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 81 as amended by L. 1898, ch. 360, § 5; L. 1903, ch. 350; originally revised from R. S., pt. 1, ch. 9, tit. 4, §§ 4, 6; L. 1840, ch. 294; L. 1848, ch. 366; L. 1887, ch. 245, as amended by L. 1888, ch. 464, and L. 1889, ch. 50.

Moneys may be paid to the loan commissioners without an act of appropriation. Rept. of Atty. Genl. (1898) 243.

§ 82. **United States deposit fund.**—The part of the United States deposit fund received out of the surplus money of the treasury of the United States, under the thirteenth section of the act of congress, entitled “An act to regulate the deposits of the public money,” passed June twenty-third, eighteen hundred and thirty-six, is held by the state on the terms, conditions and provisions specified in such act of congress, and the faith of the state is inviolably pledged for the safe keeping and repayment of all moneys thus received from time to time, whenever the same shall be required by the secretary of the treasury of the United States, under the provisions of such act. The comptroller and the treasurer of the state shall keep the accounts of the moneys belonging to the United States deposit fund in the books of their respective offices, separate and distinct from the state funds, and in such manner as to show the amount

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of principal of the fund, the amount received from the interest, the amount paid from the annual revenue and the objects to which the same have been applied. If there shall be any loss in the loans of the moneys belonging to the United States deposit fund, it shall be a charge on the interest derived from the loan of such moneys, and none of the interest moneys shall be paid out for any purpose until such loss has been made good thereon. The comptroller shall have full charge and control over the United States deposit fund, including that part of such fund now invested in mortgages in the different counties of the state. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 82; originally revised from L. 1837, ch. 2; L. 1837, ch. 150, §§ 60, 63.

Section cited.—*Switzer v. Commissioners for Loaning Certain Moneys* (1909), 134 App. Div. 487, 119 N. Y. Supp. 383.

§ 83. **Discharge and cancellation of mortgages.**—The comptroller may cancel and discharge any mortgage, on satisfactory proof that the moneys loaned and secured by such mortgage have been fully paid to the officers authorized by law to receive the same if the mortgage remains uncanceled and undischarged of record. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 84; originally revised from L. 1868, ch. 698.

Foreclosure of mortgage by loan commissioners. Rept. of Atty. Genl. (1896) 65.

§ 84. **Books and records.**—The book or books of mortgages executed to the loan commissioners shall remain in the clerk's office of the county, and in the city and county of New York in the office of the register. During office hours any person may search and examine any book required to be kept by this article. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 86, part; originally revised from L. 1837, ch. 150, § 23, as amended by L. 1863, ch. 73, and L. 1837, ch. 150, §§ 45, 55.

§ 85. **Supervision of existing United States deposit fund mortgages.**—The comptroller shall have charge of the mortgages heretofore executed to the commissioners for loaning certain moneys of the United States on lands in the several counties of the state, which mortgages shall continue with the same force and effect as if this chapter were not enacted. The rate of interest on such mortgages shall be five per centum per annum, and shall be due annually on the first Tuesday of October. The comptroller shall collect and receive the interest arising on every such mortgage. In case of failure to pay such interest before the first day of November next following the date when the same became due, the comptroller shall report such failure to the attorney-general within fifteen days after the said first day of November. The comptroller shall receive payment of the principal or any part thereof of any such mortgage on the lands when tendered and immediately pay the same into the

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state treasury, and shall satisfy and discharge the same by the execution and acknowledgment of a satisfaction piece in the usual form, which shall be recorded by the county clerk, who shall thereupon write upon the margin of such mortgage, in the book containing the same in his office, a statement to the effect that the same has been discharged and satisfied by the comptroller, giving the date thereof. Such mortgages may be assigned by the said comptroller on such terms and on such conditions as may be satisfactory to the comptroller. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 87, as amended by L. 1898, ch. 360, and L. 1906, ch. 575; originally revised from L. 1837, ch. 150, §§ 4, 5, 22, 47, 50.

§ 86. **Release of part of mortgaged premises.**—If the owner of mortgaged premises sell a part thereof, the comptroller, on application and with the consent of the mortgagor or such owner may release the part of the mortgaged premises sold from the lien of the mortgage. Such release, however, shall not be given unless a sum approved by the comptroller shall be first paid upon the mortgage and unless the part of the mortgaged premises remaining unsold, exclusive of buildings and prior liens, is worth double the residue of the mortgage debt. The comptroller shall execute such release in the usual form, which, when acknowledged, shall be recorded by the county clerk and a minute thereof made upon a margin of the mortgage. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 88; originally revised from L. 1847, ch. 476, §§ 1-3.

§ 87. **Power of comptroller to maintain actions.**—The comptroller may, at any time before the sale of the mortgaged premises, bring an action to restrain the commission of waste by any person upon the mortgaged premises, or to correct any mistake or omission in the description thereof, or to recover the amount due on a mortgage. At any time before payment and discharge of mortgage or before sale, if any person cuts or removes or injures the timber, fences, buildings or other fixtures belonging to such mortgaged premises, or threatens so to do, the comptroller may maintain a like action for damages or an injunction. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 89, as amended by L. 1898, ch. 360, § 3; originally revised from 1837, ch. 150, §§ 33, 40.

§ 88. **Foreclosure of United States deposit fund mortgages.**—If the interest due on any such mortgage shall not be paid on the first Tuesday of October of any year, or before the first day of November next following, or the principal or any part thereof shall not be paid when due, the comptroller shall cause all such mortgages upon which default is made in the payment of principal or interest to be foreclosed, whenever, in his judgment, it may be necessary or best for the protection of the interest of the state. All actions or proceedings for that purpose shall be prose-

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cuted or conducted by the attorney-general, in the supreme court or in the county court of the county where the mortgaged premises are located, and in conformity with the practice in such case made and provided. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 90, as amended by L. 1898, ch. 360; L. 1898, ch. 360, § 6; originally revised from L. 1837, ch. 150, §§ 27, 30; L. 1880, ch. 517, as amended by L. 1891, ch. 181.

Foreclosure of mortgages; procedure.—Rept. of Atty. Genl. (1905) 283. Foreclosure of mortgage given to secure loan is governed by provisions of the statute, not by Code Civil Procedure. *Barley v. Roosa* (1891), 20 Civ. Pro. 113, 119, 35 N. Y. St. Rep. 898, 13 N. Y. Supp. 209.

Sale under mortgage given pursuant to this act must strictly follow the statute. *Sherwood v. Reade* (1844), 7 Hill 431; *Olmsted v. Elder* (1851), 5 N. Y. 146; *Thompson v. The Commissioners* (1879), 79 N. Y. 54; *White v. Lester* (1864), 4 Abb. App. Dec. 585.

Redemption.—If a borrower omits to pay the interest in the manner prescribed, the mortgage becomes *ipso facto* foreclosed, there remains only the right of redemption. *Fellows v. Com'rs* (1862), 36 Barb. 655, 661; *Powell v. Tuttle* (1850), 3 N. Y. 400; *Com'rs v. Chase* (1849), 6 Barb. 37.

The right of the mortgagor to redeem is not cut off by an informality in the foreclosure of a loan commissioner mortgage. Rept. of Atty. Genl. (1893) 134.

Proceedings may be maintained by loan commissioners after foreclosure, to obtain possession of premises. Rept. of Atty. Genl. (1897) 123.

§ 89. **Disposition of surplus moneys; principal to be deposited.**—The comptroller shall, within twenty days after receiving the money arising from the sale of the mortgaged premises as provided in the preceding section, pay into the county treasury the surplus exceeding the sum due and to become due on the mortgage and the costs and expenses of the foreclosure, and shall, within such time, pay over the residue of the sum arising from the sale of such mortgaged premises, less the amount which he is entitled to retain for his costs, disbursements and expenses, to the state treasury. The provisions of the code of civil procedure relating to the disposition of the surplus money arising from the foreclosure of mortgages are hereby made applicable to the surplus arising from the sale of mortgaged premises as prescribed in the preceding section. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 90-a, as added by L. 1899, ch. 458; L. 1898, ch. 360, § 7, as amended by L. 1902, ch. 28.

Surplus moneys from foreclosure sale by loan commissioners should be paid over to the mortgagor or his heirs or assigns. Rept. of Atty. Genl. (1897) 122.

§ 90. **Supervision of lands.**—The comptroller shall exercise supervision and care over property acquired by the state through the foreclosure of United States deposit fund mortgages and may lease such property until it is disposed of according to law. The comptroller shall not be directly or indirectly interested in the purchase of any mortgaged premises; if so interested such sale shall be void. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 91 pt.; originally revised

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from L. 1837, ch. 150, §§ 8, 15, 33, as amended by L. 1878, ch. 223; L. 1844, ch. 326, § 4; L. 1863, ch. 73, § 3.

§ 91. **Audit of loan commissioners' accounts.**—At any time within one year from the rendition of any loan commissioner's report, the comptroller shall audit and adjust the account of any such commissioner for the moneys received, paid out or retained by him under this article, and fix and determine the amount due the state on account thereof, and make a certificate to that effect, which shall be presumptive evidence of the amount due the state in any action or proceeding against such commissioner or the sureties on his undertaking. (*Amended by L. 1911, ch. 634.*)

Source.—Former State Finance L. (L. 1897, ch. 413) § 93; originally revised from L. 1844, ch. 326, § 2.

§ 92. **Certified copy of original mortgage.**—On the application of any person interested, the comptroller shall furnish a certified copy of any original mortgage which has been delivered to him pursuant to law, and the same may be recorded in the office of the clerk of the county where the mortgaged premises are situated. (*Amended by L. 1911, ch. 634.*)

§ 93. **Payments to Cornell university on account of the college land scrip fund.**—The acceptance by this state of the provisions of an act of the congress of the United States, approved July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts," and which acceptance is contained in chapter twenty of the laws of eighteen hundred and sixty-three, is continued in force, notwithstanding the repeal thereof by this chapter. The money raised under chapter seventy-eight of the laws of eighteen hundred and ninety-five, by the sale or conversion into cash of the securities in which were invested the proceeds of the sales of lands and land scrip, formerly constituting the college land scrip fund, together with the money paid into the state treasury from the sale of lands or land scrip belonging to such fund, is held by the state as a part of the general fund for the benefit and use of Cornell university. Five per centum of the amount of the proceeds so transferred to the general fund shall annually be paid to the Cornell university, pursuant to a certificate issued by the comptroller to such university, by virtue of chapter seventy-eight of the laws of eighteen hundred and ninety-five, which certificate is hereby ratified and confirmed. Certificates shall also be issued by the state to such university from time to time, as the proceeds of the sales of the lands and land scrip are paid into the treasury, for the payment annually of five per centum upon such proceeds from the date of their receipt upon the same conditions as the original certificate. The comptroller in his annual estimate of the appropriations required for the expenses of the government shall include the amount required to pay the interest on these certificates. (*Amended by L. 1911, ch. 634.*)

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Source.—Former State Finance L. (L. 1897, ch. 413) § 96; originally revised from L. 1863, ch. 20; L. 1863, ch. 460; L. 1895, ch. 78.

L. 1911, ch. 634, § 2.—The loan commissioners shall within thirty days after the passage of this act make a special report to the comptroller showing all their transactions under this title from December thirty-first, nineteen hundred and ten, to the date of such report and of all moneys collected by them as principal, interest or rent during such period; and they shall immediately after making such report transmit to the state treasury all moneys in their possession collected as principal, interest or rent; and thereafter they shall not accept or receive any moneys belonging to such fund; and they shall within thirty days after the passage of this act deliver to the comptroller all books, papers, records and documents in their possession or custody relating to the United States deposit fund. Upon making and filing such report with the comptroller, and delivery to the comptroller of all of said records, the comptroller may allow and pay, to the loan commissioners, from the revenue of said fund, such sum as he shall deem equitable in full payment for their services under article five of the state finance law to the thirtieth day after the passage of this act.

§ 3. The terms of office of all the present loan commissioners shall cease and terminate and the office of all "commissioners for loaning certain moneys of the United States of the county of" shall be abolished on the thirtieth day after the passage of this act.

§ 4. This act shall take effect on the thirtieth day after its passage, except as to the provisions of section two, which section shall take effect immediately.

L. 1910, ch. 201, § 2.—Loan commissioners to pay into the state treasury all moneys now in their hands. The loan commissioners of the several counties of the State of New York are hereby directed to pay into the state treasury, within thirty days after the passage of this act, all moneys in their hands belonging to the United States deposit fund.

L. 1910, ch. 85.—An act to legalize and confirm the official acts of the commissioners for loaning certain moneys of the United States of the county of New York.

Section 1. The official acts of the commissioners for loaning certain moneys of the United States of the county of New York, in assigning five certain mortgages executed to said commissioners and known and designated as loan mortgages numbers nine hundred and fifty-six, nine hundred and eighty-one, nine hundred and eighty-two, nine hundred and eighty-three and nine hundred and eighty-four, are hereby legalized and confirmed and made as effectual and valid as if the power to make such assignments had been vested in said commissioners by law.

Constitutionality.—The section is not violative of the Federal act (July 2, 1862), granting lands to the state to provide a college for the benefit of agriculture and the mechanic arts. *Cornell University v. Fiske* (1890), 136 U. S. 152, 34 L. ed. 427, 10 Sup. Ct. 775, affg. *Matter of McGraw* (1888), 111 N. Y. 66, 19 N. E. 233, 2 L. R. A. 387.

Liability.—State is not liable to pay any greater sum than it is enabled to receive by safe investment of its trust fund. *People ex rel. Cornell Univ. v. Davenport* (1889), 117 N. Y. 549, 23 N. E. 664.

ARTICLE VI.

MISCELLANEOUS FUNDS.

Section 100. Military record fund.

101. Mariners' fund.

102. Chancery fund.

103. Prison fund.

§ 100. **Military record fund.**—All moneys contributed and paid over to the treasurer of the state by towns, cities and individuals for the erection of a hall of military record belong to the military record fund. Such fund shall be invested in the same manner as other state funds and a separate account thereof shall be kept by the state treasurer. The interest arising from the investment of such fund shall be used in the maintenance of such quarters in the state capitol as shall be set apart for the safe keeping of military records, books and property, and for the display of colors, standards, battle flags and relics, which is known as the hall of military record.

Source.—Former State Finance L. (L. 1897, ch. 413) § 100; originally revised from L. 1865, ch. 744; L. 1866, ch. 610; L. 1878, ch. 369.

§ 101. **Mariners' fund.**—The loan of ten thousand dollars made by the comptroller to the trustees of the American Seamen's Friend society in the city of New York, pursuant to chapter one hundred and seventy-three of the laws of eighteen hundred and forty, and continued by chapter thirty-seven of the laws of eighteen hundred and forty-five, shall constitute the mariners' fund. Such loan shall be secured by mortgage satisfactory to the comptroller and may be retained by such trustees, without payment of interest, as long as they shall faithfully use and apply the same to promote the benevolent objects of the sailors' home, erected for the boarding and accommodation of seamen in such city.

The trustees of such institution may mortgage the sailors' home for a term not less than seven years to secure the debts due from, or money loaned to, them for the lawful purpose of such institution, to an amount not exceeding fifteen thousand dollars. Such mortgage shall be a lien on such home prior to the lien held by the state to secure the loan mentioned in this section, provided all other liens and incumbrances on such home be discharged and canceled of record.

No sale of such sailors' home upon the foreclosure of any mortgage prior to the lien of the state shall be had without, at least, six weeks' previous notice of such sale served personally upon the comptroller.

Source.—Former State Finance L. (L. 1897, ch. 413) § 101; originally revised from L. 1845, ch. 37.

§ 102. **Chancery fund.**—All moneys, securities, and real estate formerly under the control and in possession of the court of chancery, and trans-

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Laws repealed.

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ferred to the comptroller by the clerk of the court of appeals, pursuant to chapter one hundred and thirty-five of the laws of eighteen hundred and ninety-four, is credited to the general fund and is a part thereof. The comptroller is authorized to convert into cash the securities, real estate and other property belonging to the fund so transferred, and may execute good and sufficient deeds for the conveyance of such real property.

A person claiming any portion of such property, shall apply to a court of competent jurisdiction after due notice to the comptroller of the time and place of making such application, for an order directing the payment of such portion to him. Upon such order and the warrant of the comptroller the treasurer shall pay such portion to him.

Source.—Former State Finance L. (L. 1897, ch. 413) § 102; originally revised from L. 1894, ch. 135; L. 1894, ch. 678; L. 1895, ch. 818, as amended by L. 1896, ch. 891. The first of these acts transferred the chancery funds to the comptroller; the second provided that the income of such fund should be paid for the support of certain law libraries; the last act transferred this fund as a whole to the general fund and made all proved claims against the chancery fund a charge thereupon. This last act superseded, in effect, L. 1894, ch. 678, providing for the disposition of the income of this fund.

§ 103. **Prison fund.**—The prison fund shall consist of all moneys raised by taxation for prison purposes or heretofore appropriated and unexpended therefor, and all moneys arising from the sale of the products or property of the prisons, and all such moneys, whenever received in the treasury, shall be placed to the credit of such fund; and all appropriations made for any of the prisons of this state except for repairs other than the ordinary repairs thereof for the maintenance thereof, for the purchase of materials therefor, and for manufacturing therein, shall be paid by the treasurer from such fund, upon the warrant of the comptroller.

Source.—L. 1887, ch. 637.

ARTICLE VII.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 110. Laws repealed.

111. When to take effect.

§ 110. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Source.—Former State Finance L. (L. 1897, ch. 413) § 110.

§ 111. **When to take effect.**—This chapter shall take effect immediately.

Source.—Former State Finance L. (1897, ch. 413) § 111.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.....	Part 1, chapter	8, title 3	All
Revised Statutes.....	Part 1, chapter	8, title 4	All
Revised Statutes.....	Part 1, chapter	9, titles 2-4, 6	All

L. 1909, ch. 58.

Laws repealed.

Revised Statutes.....Part 1, chapter 19, title 3, section 1, except part relating to accounts arising in courts

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1778	18	All	1786	20	All
1778	23	All	1786	40	All
1778	35	4	1786	48	All
1778	40	All	1786	56	13
1779	15	All	1786	64	All
(2d Sess.)			1787	73	5, 6
1779	20	All	1787	83	All
(2d Sess.)			1787	102	1, 2, 14
1779	8	All	1788	30	All
(3d Sess.)			1788	39	All
1780	46	All	1788	95	1, 2, 13-15
1780	64	1-5	1789	8	All
1780	72	All	1789	20	All
1780	73	All	1789	29	All
1780	7	All	1790	13	All
(4th Sess.)			1790	20	All
1780	11	1-7,	1790	21	All
9-14 (4th Sess.)			1790	31	All
1781	19	All	1791	16	All
1781	20	1, 7, 8	1791	40	All
1781	22	All	1791	49	All
1781	46	All	1792	1	All
1781	49	6	(15th Sess.)		
1781	50	All	1792	19	All
1781	51	8-10	1792	25	All
1781	55	1-4	1792	47	All
1781	56	All	1792	58	All
1781	58	All	1792	63	8
1781	3	All	1792	71	All
(5th Sess.)			1793	34	All
1781	9	All	1793	41	1, 2
(5th Sess.)			1793	52	All
1781	11	All	1794	15	All
(5th Sess.)			1794	57	All
1782	21	All	1795	56	All
1782	28	All	1795	68	All
1782	33	All	1796	9	All
1782	37	2, 5-12	1797	4	All
1782	41	All	1797	9	All
1782	46	12-14	1797	21	All
1782	4	All	1797	23	All
(6th Sess.)			1798	9	All
1782	5	All	1798	13	All
(6th Sess.)			1798	36	4-9
1782	6	5, 8, 9	1798	38	All
(6th Sess.)			1798	74	All
1783	24	All	1798	93	6
1783	33	All	1799	8	All
1783	34	2	1799	16	4-6
1784	14	All	1799	18	1-4
(7th Sess.)			1799	42	All
1784	19	All	1800	2	All
1784	44	All	1801	33	4, 5
1784	45	All	1801	52	1
1784	58	18	1801	173	1,
1784	64	38-42	part relating to method of paying salaries; 8, 9		
1784	65	33, 41, 43	1801	185	1-21
1785	32	All	1802	38	All
1785	53	All	1803	1	2, 3, 5
1785	60	1-10	1803	15	All
1785	76	1	1803	22	All
1785	80	5, 16, 18, 21	1803	103	31
1785	90	11	1804	39	1-3, 6
1786	19	All			

Laws repealed.			L. 1909, ch. 58.		
LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1804	111	14	1817	262	1, 5
1805	6	All	1818	38	All
1805	19	All	1818	233	All
1805	27	All	1818	282	All
1805	60	All	1819	36	All
1805	66	All	1819	48	All
1805	135	33-35, 37	1819	70	All
1806	157	All	1819	212	All
1806	187	5, 6	1820	33	All
1807	32	All	1820	117	6, 7
1807	74	3	1820	187	All
1807	94	All	1820	244	All
1807	183	27	1821	36	1, 7
1808	24	All	1821	74	8
1808	34	All	1821	114	All
1808	174	All	1821	177	All
1808	215	2	1821	189	1, 2
1808	216	All	1821	240	7-9
1808	240	22, 41	1822	6	All
1809	77	1	1822	124	1-3
1809	93	All	1822	127	2, 3
1809	94	1	1822	193	1
1809	152	All	1822	249	1-5, 8, 9
1810	53	2	1822	255	1-3
1810	159	All	1823	56	All
1811	55	All	1823	96	All
1811	189	All	1823	104	All
1811	206	All	1823	147	2
1811	246	32	1823	180	All
1811	248	1, 2	1823	267	All
1812	3	All	1824	25	1
1812	17	All	1824	54	All
1812	35	All	1824	163	All
1812	188	All	1824	241	All
1812	222	All	1824	250	All
1812	234	1, 2	1824	255	All
1812	237	All	1824	278	All
1812	239	65	1824	302	All
1813	79	2, 3	1824	311	All
1813	99	All	1824	333	All
1813	122	All	1824	337	All
1813	185	1-4	1825	185	All
R. L. 1813	2	6-9	1825	256	All
R. L. 1813	6	3-5	1825	272	All
R. L. 1813	42	1-5, 7-23, 25-28	1825	292	All
R. L. 1813	55	2-4, 7, 8, 10, 11	1825	318	All
R. L. 1813	84	All	1825	321	All
1814	17	4	1826	298	All
1814	120	11	1826	304	6
1814	132	All	1826	305	All
1814	152	All	1826	314	20-23
1814	200	23, 41, 49	1826	321	1, 2
1814	11	4	1827	2	All
(38th Sess.)			1827	110	2
1815	56	All	1827	219	30
1815	84	All	1827	228	All
1815	111	All	1828	275	All
1815	141	All	1828	300	All
1815	223	All	1828	324	All
1815	266	13, 29, 35, 36	1828	21	1,
1816	49	All	1828	158, 184, 246, 262, 273, 275, 287, 321, 330, 355, 365, 369, 380, 388, 413, 420, 448, 455, 487, 488, 501, 513 (2d Meet.)	
1816	236	16,	1829	91	All
17, 21, 28, 30, 32, 35, 36, 43			1829	201	All
1816	5	3			
(40th Sess.)					
1817	194	All			

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Laws repealed.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1829	325	All	1847	258	All
1829	376	4	1847	293	All
1830	184	All	1847	277	11
1830	242	All	1847	438	All
1831	102	All	1847	476	All
1831	281	All	1848	162	All
1831	286	All	1848	215	All
1831	320	All	1848	216	All
1831	323	3	1848	366	All
1832	8	All	1849	225	All
1832	118	All	1849	228	All
1832	164	1	1849	230	All
1832	296	All	1849	232	All
1833	56	All	1849	301	All
1833	74	All	1849	382	13
1833	274	All	1850	332	All
1834	59	All	1850	337	All
1834	130	All	1850	375	2
1834	284	All	1851	197	All
1835	182	All	1851	285	All
1835	260	All	1851	286	All
1836	356	All	1851	351	All
1836	464	All	1851	410	All
1836	470	All	1851	454	All
1837	2	All	1851	501	All
1837	63	All	1851	536	All
1837	102	All	1852	235	All
1837	150	All	1852	315	All
1837	360	All	1852	370	All
1838	58	All	1853	36	All
1838	193	All	1853	222	All
1838	237	All	1853	254	All
1838	333	16	1855	23	All
1839	198	All	1855	335	2-5
1839	381	All	1855	535	3
1840	37	All	1856	3	All
1840	97	All	1857	592	All
1840	161	All	1857	721	All
1840	194	All	1857	783	All
1840	288	1-12	1858	263	All
1840	294	All	1860	213	6, 7
1840	358	All	1860	490	All
1841	49	All	1860	494	All
1841	194	All	1861	102	All
1841	238	All	1861	177	All
1841	264	All	1861	227	All
1842	34	All	1862	25	All
1842	114	All	1862	29	All
1842	310	All	1862	223	All
1843	44	All	1862	462	All
1843	48	All	1863	20	All
1843	240	2	1863	200	All
1844	15	All	1863	73	All
1844	314	All	1863	460	All
1844	326	All	1864	170	4
1845	37	All	1864	182	5
1845	184	All	*1864	185	4
1845	267	All	1864	229	All
1846	326	All	1864	266	All
1847	8	All	1864	280	2, 3
1847	17	All	1864	304	All
1847	18	All	1864	305	4
1847	99	All	1864	401	1,

* Stricken from schedule and expressly reenacted by L. 1909, ch. 240, § 88 in effect Apr. 22, 1909, as though never included in said schedule.

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Consolidators' notes.

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part providing for liens against the real estate of institutions and corpo- rations benefited.			LAWS OF	CHAPTER	SECTION
1864	419	All	1889	50	All
1864	553	All	1889	136	All
1865	56	All	1889	570	1,
1865	182	4, 5	part, last seven paragraphs beginning with "The manager, trustee," etc.		
1865	226	3	1891	181	All
1865	294	All	1892	651	9
1865	325	1-7	1893	672	All
1866	209	All	1894	135	All
1867	488	All	1894	678	All
1867	704	All	1895	78	All
1868	554	All	1895	818	All
1868	698	All	1896	191	All
1868	830	3	1897	413	All
1869	645	3	1897	444	All,
1869	669	All	except part relating to counties and municipal corporations		
1869	756	All	1898	360	All
1870	379	All	1899	32	All
1871	654	2	1899	383	All
1871	718	3	1899	458	All
1872	115	All	1899	479	All
1873	760	2,	1899	580	All
part last paragraph beginning with the words "The comptroller is au- thorized at all times" to end of para- graph			1899	715	All
1874	323	2,	1900	326	1
third paragraph from end of section			1901	432	All
1874	500	All	1901	457	All
1876	192	1,	1901	645	1,
last paragraph			part second paragraph on page 1617, beginning "all fees, interest and ex- penses" and ending "rejected by the comptroller"		
1876	302	All	1901	678	All
1877	245	All	1902	28	All
1878	233	All	1902	59	All
1878	291	All	1902	366	All
1880	100	All	1903	239	All
1880	517	All	1903	350	All
1882	108	All	1904	95	All
1883	69	All	1904	97	All
1883	364	All	1904	225	All
1883	517	All	1904	448	All
1884	250	All	1905	372	All
1884	412	2, 3	1905	388	All
1885	267	5, 6	1905	504	All
1886	330	1,	1905	587	All
part beginning at "The managers, trustees" to end of section			1906	575	All
1887	245	All	1907	561	All
1887	460	1,	1908	188	All
part, last seven paragraphs beginning with "The managers, trustees"			Code Civil Procedure		
1887	637	All	word "except" to end of section; 39, words "and the expense" to end of section; 226, last sentence; 233, last sentence; 744, part relating to duty of comptroller; 3295		
1888	326	All			
1888	464	All			

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

Statutes repealed, which are temporary or obsolete, or have been consolidated in the "Consolidated Laws," are given with an explanatory note, as follows:

R. S., pt. 1, ch. 19, tit. 3, § 1.—Consolidated in State Finance Law, § 45, except the part relating to courts which is consolidated in Judiciary Law, § 35.

L. 1776, ch. 18.—Obsolete. Appoints commissioners to receive subscriptions to loan money to the United States under the resolution of congress passed Nov. 22, 1777.

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Consolidators' notes.

L. 1778, ch. 23.—Obsolete. Authorizes the treasurer of the state to pay into the treasury of the United States \$200,000, and to procure treasury receipts therefor.

L. 1778, ch. 35, § 4.—Obsolete. Authorizes the treasurer of the state to pay accounts on the audit of the auditor general, and on joint order, or resolution of the senate and assembly.

L. 1778, ch. 40.—Obsolete. Requires debts due the state to be paid within six months, and charges them with interest at the rate of fifteen pounds on every one hundred pounds per annum if not paid.

L. 1779, ch. 15 (2d session).—Obsolete. Provides for the canceling and destruction of bills of credit of the denomination of one dollar and under.

L. 1779, ch. 20 (2d session).—Obsolete. Provides for the calling in and exchange of certain Continental currency.

L. 1779, ch. 8 (3d session).—Obsolete. Provides for the appointment of a commissioner of the loan office of the United States for this state.

L. 1780, ch. 46.—Obsolete. Provides for the cancellation of defaced bills of credit.

L. 1780, ch. 64.—Section 3 was repealed by L. 1781, ch. 19, § 1 (4th session); balance of act approves the act of congress providing for financing the government, and makes provision for redeeming the state's proportion of the bills of credit to be issued under said act.

L. 1780, ch. 72.—Section 1 pt. specified in schedule was repealed by L. 1781, ch. 19, § 1 (4th session); sections 2 and 3 were repealed by L. 1781, ch. 58, § 1 (4th session). Balance of act is supplemental to the act making provisions for redeeming bills of credit, and sustaining the value of new bills issued; obsolete.

L. 1780, ch. 73.—Obsolete. Provides for the payment of moneys taken on loan by the state.

L. 1780, ch. 7 (4th session).—Obsolete. Provides for the liquidation and settlement of claims for pay due troops of this state in the service of the United States, because of the depreciation of the currency.

L. 1780, ch. 11, §§ 1-7, 9-14 (4th session).—Obsolete. Provides for the sale of certain forfeited and other lands to provide specie for paying part of the bills of credit emitted on the credit of the state.

L. 1781, ch. 19.—Obsolete. Establishes the rate of exchange between bills of credit and Continental currency.

L. 1781, ch. 20, §§ 1, 7, 8.—Provides for the appointment of commissioners to procure money on loan, and to purchase clothing, and bind the state in contracts made and entered into therefor; obsolete.

L. 1781, ch. 22.—Section 4 was repealed by L. 1781, ch. 55, § 1; balance of act obsolete. It extends the provisions of L. 1870, ch. 7, to certain persons named.

L. 1781, ch. 46.—Obsolete. Provides for the issue of bills upon the credit of the state.

L. 1781, ch. 49, § 6.—Obsolete. Prohibits the state treasurer from paying certain drafts made by congress.

L. 1781, ch. 50.—Obsolete. Provides for the recovery of debts due to and the settlement of accounts with the state and allowance for depreciation and scale of exchange values.

L. 1781, ch. 55, §§ 1-4.—Obsolete. Further providing for the liquidating and settling of the accounts of troops of the state in the service of the United States.

L. 1781, ch. 56.—Obsolete. Provides for the payment of interest on bills of credit.

L. 1781, ch. 3 (5th session).—Obsolete. Authorizes state treasury to exchange old money issues for new.

L. 1781, ch. 11 (5th session).—Obsolete. Requires the several county treasurers to report to the legislature the amounts assessed and collected under the several tax levies since the Declaration of Independence.

L. 1782, ch. 21.—Obsolete. Provides for the appointment of an auditor, and prescribes his duties and compensation and authorizes the state treasurer to pay on his audit.

L. 1782, ch. 33.—Sections 1 and 2 were repealed by L. 1785, ch. 60, § 1 (8th session); balance of act indemnifies loan officers for omission to sell lands mortgaged to them for nonpayment of interest.

L. 1782, ch. 37, §§ 2, 5-11.—Obsolete. Provides that all wheat and rye received for taxes be sold or made into flour and sold and the proceeds paid into the state treasury; directs the appointment of a commissioner to adjust and settle claims against the state; inhibits the further issue of bills of credit; names commissioners to instruct commissioners named to adjust and settle accounts, and directs the state treasury to pay certain commissioners and pledges the credit of the state.

L. 1782, ch. 41.—Obsolete. Relates to the settlement of the accounts of the troops of the state in the service of the United States.

L. 1782, ch. 46, §§ 12-14.—Obsolete. Provides for the provisioning of troops called out for the defense of the frontier.

L. 1782, ch. 4 (6th session).—Obsolete. Provides for the appointment of a commissioner to settle accounts between the state and the United States.

L. 1782, ch. 5 (6th session).—Obsolete. Authorizes congress to adjust and settle the state's proportion of the expenses of the war.

L. 1782, ch. 6, §§ 5, 8, 9 (6th session).—Obsolete. Provides for the disposition of money raised by tax and authorizing the governor to take money on loan.

L. 1783, ch. 24.—Obsolete. Refers to settlement of accounts of troops of the state in service of United States.

L. 1783, ch. 33.—Obsolete. Provides for the relief of certain officers and troops.

L. 1783, ch. 34, § 2.—Obsolete. Provides for the settlement of certain officers' accounts in the department of the general staff.

L. 1784, ch. 14 (7th session).—Spent. Continues L. 1782, ch. 21, the act appointing an auditor and prescribing his duties.

L. 1784, ch. 19.—Obsolete. Concerns settlement of accounts of troops.

L. 1784, ch. 44.—Section 10 was repealed by L. 1785, ch. 90, § 11; balance is obsolete. Facilitates the settling of accounts of this state with the United States.

L. 1784, ch. 58, § 18.—Obsolete. Authorizes auditor to audit accounts of certain commissioners.

L. 1784, ch. 64, §§ 38-42.—Obsolete. Concerns estates forfeited to, and directed to be sold for the use of, the people of the state.

L. 1784, ch. 65, §§ 33, 41, 43.—Obsolete. Directs the suspension temporarily of prosecution of certain loan officers; also directs that interest be paid on loans taken by the governor and provides that certain certificates issued by the state treasurer shall be negotiable.

L. 1785, ch. 32.—Obsolete. Appoints commissioners to cancel bills of credit issued when the state was a colony.

L. 1785, ch. 53.—Obsolete. Directs the state treasurer to pay money to the treasury of the United States.

L. 1785, ch. 60, §§ 1-10.—Act enabling persons to discharge debts due to state for moneys loaned while the state was a colony.

L. 1785, ch. 76, § 1.—Obsolete. Provides that the loan officers shall pay into the treasury the species of moneys actually received by them.

L. 1785, ch. 80, §§ 5, 16, 18, 21.—Section 5 was repealed by L. 1792, ch. 58, § 2; sections 16, 18 and 21 authorize the treasurer to issue an interest-bearing certificate for reward for apprehending deserters, provide for the prosecution of sheriffs for moneys unaccounted for, and postpone time for bringing suits against state agent; obsolete.

L. 1786, ch. 19.—Obsolete. Makes certain public securities negotiable.

L. 1786, ch. 20.—Spent. Concerning L. 1782, ch. 21, the act appointing an auditor and prescribing his duties.

L. 1786, ch. 40.—Section 24 was repealed by L. 1788, ch. 20, § 5 (11th session); balance of act obsolete. Provides for issuing bills of credit to the value of two hundred thousand pounds to increase circulation.

L. 1786, ch. 48.—Obsolete. Provides for certain payments to the United States.

L. 1786, ch. 56, § 13.—Obsolete. Authorizes state treasurer to procure money to meet requisition made by congress on this state.

L. 1786, ch. 64.—Obsolete. Supplemental to L. 1786, ch. 40, authorizing bills of credit.

L. 1787, ch. 73, §§ 5, 6.—Obsolete. Authorizes treasurer to redeem bills of credit.

L. 1787, ch. 83.—Obsolete. Authorizes the treasurer to pay requisition made by congress on the state.

L. 1787, ch. 102, §§ 1, 2.—Obsolete. Provides for the issue of certificates for the amounts paid into the state treasury because of the resolution of the Committee of Safety.

L. 1788, ch. 30.—Obsolete. Provides for the issue of bills of credit to take up former issue being counterfeited.

L. 1788, ch. 39.—Spent. Concerns the appointment of auditor, and the collection of quitrents.

L. 1788, ch. 95, §§ 1, 2, 13-15.—Section 15 was repealed by L. 1790, ch. 31, § 5; sections 1 and 2 constitute the state auditor sole commissioner to settle accounts with the United States; sections 13 and 14 relate to arrears of rent on forfeited estates and actions by treasurer for forfeitures. Obsolete.

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Consolidators' notes.

L. 1789, ch. 8.—Obsolete. Authorizes treasurer to receive payment of certain debts in public securities.

L. 1789, ch. 20.—Obsolete. Authorizes state treasurer to pay to United States arrears in former requisitions.

L. 1789, ch. 29.—Obsolete. Provides for canceling certain bills of credit and gives further direction to the loan officer.

L. 1790, ch. 13.—Spent. Concerning L. 1872, ch. 21, the act appointing an auditor.

L. 1790, ch. 20.—Obsolete. Appoints commission to receive and audit claims against the state.

L. 1790, ch. 21.—Obsolete. Provides for exchanging bills of credit.

L. 1790, ch. 31.—Obsolete. Provides for exchanging certain public securities.

L. 1791, ch. 16.—Obsolete. Provides for inducing subscriptions to United States loan.

L. 1791, ch. 40.—Obsolete. Enacts general directions for loan officers.

L. 1791, ch. 49.—Obsolete. Authorizes state treasurer to subscribe for shares in the Bank of the United States.

L. 1792, ch. 1 (15th session).—Obsolete. Authorizes and directs state treasurer to subscribe for shares in the Bank of New York.

L. 1792, ch. 19.—Amends L. 1782, ch. 21, providing for the appointment of an auditor and fixing his duties. Obsolete.

L. 1792, ch. 25.—Obsolete. Provides for the appointment of loan officers and the loaning of state funds.

L. 1792, ch. 47.—Obsolete. Provides for paying unclaimed pay certificates due the levies and militia.

L. 1792, ch. 58.—Obsolete. Provides that interest shall not be allowed on certain certificates; and that treasurer make certain deposits in the Bank of New York.

L. 1782, ch. 63, § 8.—Obsolete. Provides how appropriations are to be paid.

L. 1792, ch. 71.—Obsolete. Enacts certain provisions governing loan officers and supervisors.

L. 1793, ch. 34.—Obsolete. Concerns the survivors of persons appointed to sign bills of credit.

L. 1793, ch. 41, §§ 1, 2.—Obsolete. Provides that all debts and demands due to or from the state except quitrents be paid in money.

L. 1793, ch. 52.—Obsolete. Provides for the payment of state agents' certificates.

L. 1794, ch. 57.—Amending L. 1782, ch. 21, providing for appointment of an auditor and fixing his duties. Obsolete.

L. 1795, ch. 56.—Obsolete. Appoints agents to determine claims to moneys paid by state of Vermont.

L. 1795, ch. 68.—Obsolete. Appoints commission to dispose of the state's United States stock, for payment of certain certificates, and for loans.

L. 1796, ch. 9.—Amends L. 1782, ch. 21, providing for appointment of an auditor and fixing his duties. Obsolete.

L. 1797, ch. 4.—Obsolete. Authorizes state treasurer to receive principal due on any stock held in trust for the state.

L. 1797, ch. 23.—Obsolete. Provides for making changes in the state funds to increase income.

L. 1798, ch. 9.—Spent. Provides for the custody of state funds and property during vacancy in office of treasurer.

L. 1798, ch. 13.—Obsolete. Directs comptroller to give order on treasurer in favor of senate and assembly clerks for contingent legislative expenses.

L. 1798, ch. 38.—Sections 4–11 were repealed by L. 1801, ch. 193; balance is obsolete. Provides for closing accounts of the state treasurer.

L. 1798, ch. 74.—Spent. Temporarily extends certain provisions of L. 1795, ch. 56, concerning moneys paid by the state of Vermont.

L. 1798, ch. 93, § 6.—Section 6 pt., from word "all" in line 5, to and including the word "Ulater" in line 9, repealed by L. 1808, ch. 174, § 2. Balance of section provides for assessing deficiencies arising from loans made by loan officers. Obsolete.

L. 1799, ch. 16, §§ 4–6.—Obsolete. Provides for annual report of state treasurer, fixes his salary, names certain banks as depositories for state funds and provides how payments be made from loan officers. Superseded by L. 1892, ch. 683, and L. 1897, ch. 413.

L. 1799, ch. 18, §§ 1–4.—Obsolete. Provides for the inspection of certain loan officers' records, for sale of mortgaged lands in certain cases and confirms certain appointments.

L. 1799, ch. 42.—Obsolete. Provides for the cancellation and destruction of certain bills of credit.

L. 1800, ch. 2.—Obsolete. Authorizes the comptroller to allow certain expenses of commissioners of taxes.

L. 1802, ch. 38.—Spent. Extends time for payment of loans of state moneys theretofore made.

L. 1803, ch. 1, §§ 1-3, 5.—Section 2 pt., last thirty-three words and § 3, were repealed by L. 1804, ch. 39, § 6. Sections 1-3 were repealed by L. 1813, ch. 202. Section 5 appoints committee to destroy certain bills of credit. Obsolete.

L. 1803, ch. 15.—Obsolete. Authorizes new record books for loan officers.

L. 1803, ch. 22.—Spent. Temporary continues L. 1801, ch. 185, relating to the office and duties of comptroller.

L. 1804, ch. 43, § 1.—Obsolete. Authorizes the comptroller to pay the United States the amount of the direct tax due and unpaid.

L. 1804, ch. 113.—Obsolete. Appropriates certain avails of second lottery.

L. 1805, ch. 6.—Obsolete. Directs the secretary of state to dispose of military bounty land warrants and pay proceeds into the state treasury.

L. 1805, ch. 19.—Obsolete. Directs redemption of lands sold for United States direct tax.

L. 1805, ch. 27.—Obsolete. Extends time for the payment of loans of state moneys.

L. 1805, ch. 60.—Obsolete. Continues L. 1801, ch. 185, relating to the office and duties of comptroller.

L. 1805, ch. 135, §§ 33-35, 37.—Section 37 was repealed by L. 1807, ch. 94, § 1. Sections 33-35, provide for foreclosing unpaid state mortgages. Obsolete.

L. 1806, ch. 187, §§ 5, 6.—Section 5 was repealed by L. 1813, ch. 202. Section 6 appoints commission to destroy certain bills of credit. Obsolete.

L. 1807, ch. 32.—Obsolete. Authorizes the comptroller to invest money in the stock of the Merchant's Bank, and appropriates it to the use of the common schools.

L. 1808, ch. 24.—Spent. Extends time for the payment of loans of state money.

L. 1808, ch. 34.—Spent. Continues L. 1801, ch. 185, relating to the office and duties of comptroller temporarily.

L. 1808, ch. 174.—Obsolete. Provides for assessing deficiencies of loans in Ulster county.

L. 1808, ch. 216.—Obsolete. Concerning loans to the counties of the state.

L. 1808, ch. 240, §§ 22, 41.—Spent. Restricts temporarily prosecutions by the attorney-general, and authorizes the comptroller to borrow money.

L. 1809, ch. 77, § 1.—Spent. Extends time for the repayment of loans of state money.

L. 1809, ch. 93.—Obsolete. Extends time of payment of debt from Bank of New York, and directs comptroller to subscribe to certain other bank stocks.

L. 1809, ch. 152.—Obsolete. Concerning loans of state moneys to citizens of the state.

L. 1811, ch. 55.—Obsolete. Extends time of payment of loans appropriated to the use of common schools.

L. 1811, ch. 248, §§ 1, 2.—Obsolete. Concerning the payment and commutation of quitrents.

L. 1812, ch. 35.—Obsolete. Concerning the prosecution of certain delinquents by the attorney-general.

L. 1812, ch. 188.—Obsolete. Authorizes the exchange of shares of the Bank of the United States for stock of the Bank of America.

L. 1812, ch. 222.—Obsolete. Directs comptroller to assign certain securities to the trustees of the College of Physicians and Surgeons of the western district.

L. 1813, ch. 99.—Obsolete. Provides for publishing notices requiring payment of the fees of court clerks and for enforcing payment of said fees.

L. 1813, ch. 185, §§ 1-4.—Obsolete. Authorizes loans of state moneys to certain persons, authorizes comptroller to borrow \$7,000, appoints commission to liquidate claims for improvement to navigation at Lansingburgh.

L. 1814, ch. 120, § 11.—Obsolete. Transfers the right of the state to subscribe to the stock of the Bank of Utica to the College of Physicians and Surgeons.

L. 1814, ch. 132.—Obsolete. Authorizes a loan to the Rutland Woollen Manufacturing Company.

L. 1814, ch. 152.—Obsolete. Authorizes loan to the town of Stratford to be used in improving a road.

L. 1814, ch. 200, §§ 23, 41, 49.—Section 23 was repealed by L. 1818, ch. 222,

L. 1909, ch. 58.

Consolidators' notes.

§ 60, and L. 1823, ch. 244, § 76. Sections 41 and 49 authorize personal loan by the comptroller, and subscription to certain bank stock. Obsolete.

L. 1814, ch. 11, § 4 (38th session).—Obsolete. Requires that notices of dividends on corporate stock owned by the state be given to the comptroller.

L. 1815, ch. 56.—Sections 1, 2 and 4 repealed by L. 1828, ch. 21, § 1, ¶ 184, second meeting; balance of act obsolete. Concerns the rate of interest on loans due from the state.

L. 1815, ch. 84.—Obsolete. Authorizes loan to the United States to be used in paying the state militia.

L. 1815, ch. 111.—Obsolete. Authorizes the payment of the state's quota of the direct tax to the United States.

L. 1815, ch. 141.—Obsolete. Authorizes the comptroller to borrow money, and directs the disposition of the same.

L. 1815, ch. 223.—Obsolete. Directs the comptroller to pay the arrearages of the direct tax to the United States.

L. 1815, ch. 246, §§ 13, 29, 35, 36.—Obsolete. Changes time when interest is to be reckoned on certain loans; provides for statement and adjustment of accounts between the state and the United States, and discharges certain banks from certain obligations upon conditions expressed.

L. 1816, ch. 49.—Obsolete. Provides for paying state's quota of direct tax to the United States.

L. 1816, ch. 236, §§ 16, 17, 21, 28, 30, 32, 35, 36, 43.—Section 16 was repealed by L. 1817, ch. 86, § 2; §§ 28 and 35 were repealed by L. 1828, ch. 21, § 1, ¶ 217, 2d meeting; § 43 was repealed by L. 1819, ch. 161, § 39; §§ 17, 21, 30, 32 and 36 provide for certain expenses of the comptroller; where funded debt interest may be paid; that canceled bills of credit be burned; that comptroller receive United States treasury notes in payment of interest; that loans may be made to pay debts due to certain banks; obsolete.

L. 1817, ch. 194.—Obsolete. Extends time for the payment of loans of state moneys.

L. 1817, ch. 262.—This chapter, except so much of § 5 as relates to duty on sales at auction, was repealed by L. 1828, ch. 21, § 1, ¶ 241; so much as was not repealed was superseded by R. S., pt. 1, ch. 9, tit. 2, § 1.

L. 1818, ch. 282.—Obsolete. Provides for the redemption of the funded debt and for improving the state funds.

L. 1819, ch. 70.—Obsolete. Authorizes the president of the Manhattan Company to have same powers as the cashier in the matter of the transfer of state stocks, and the issuance of certificates.

L. 1820, ch. 33.—Obsolete. Provides for disposition of school funds created by L. 1819, ch. 212. L. 1819, ch. 212, was repealed by L. 1829, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1820, ch. 117, §§ 6, 7.—Obsolete. Provides how moneys received from the sale of the salt springs' lots shall be applied. Purposes of act have been accomplished.

L. 1820, ch. 187.—Obsolete. Authorizes the reimbursement of canal commissioners and authorizes them to borrow money for certain purposes. Purposes of act have been accomplished.

L. 1820, ch. 244.—Sections 1-6, 8 were repealed by L. 1828, ch. 21, § 1, ¶ 549; § 7 is a repealing section and all the statutes which it repeals are included in this schedule; § 9 concerns certain temporary duties of the loan officers of Orange county. Obsolete.

L. 1821, ch. 114.—Covered by L. 1892, ch. 689, § 43. Obsolete. Permits state banks to subscribe to canal fund.

L. 1821, ch. 189, §§ 1, 2.—Obsolete. Extends time for the payment of loans of state moneys, and defines certain duties of loan officers. Purposes of act have been accomplished.

L. 1822, ch. 6.—Obsolete. Construes R. L. 1813, ch. 2, which was repealed by L. 1828, ch. 21, § 1, ¶ 125, 2d meeting.

L. 1823, ch. 124, §§ 1-3.—Obsolete. Provides for a state tax and the sale of certain state lands. Purposes of act have been accomplished.

L. 1823, ch. 249, §§ 1-5, 7-9.—Sections 1-3, 7-9 were repealed by L. 1828, ch. 21, § 1, ¶ 365 (2d meeting). Section 5 was repealed by L. 1828, ch. 21, § 1, ¶ 549 (2d meeting). Section 4 relates to payment of interest on loans made pursuant to L. 1786, ch. 40; L. 1792, ch. 25, and L. 1808, ch. 216, and is obsolete.

L. 1823, ch. 96.—Obsolete. Authorizes canal commissioners to borrow money during year 1823, and appropriating the same.

L. 1823, ch. 104.—Obsolete. Concerns the payment and commutation of quitrents before January 1, 1824.

L. 1823, ch. 147, §§ 2, 3.—Obsolete. Concerns the payment of interest on canal loans for 1823, and extends certain privileges of the Bank of New York for two years.

L. 1823, ch. 180.—Section 1 was repealed by L. 1828, ch. 21, § 1, ¶ 388; balance of act is obsolete. Concerns the duties of loan officers. Part of provisions are temporary and the remainder are covered by R. S., pt. 1, ch. 12, tit. 2, art. 3.

L. 1823, ch. 267.—Obsolete. Concerns the settlement of accounts of certain state agents. Purposes of act have been accomplished.

L. 1824, ch. 54.—Obsolete. Provides for the relief of residents on the Niagara frontier.

L. 1824, ch. 163.—Obsolete. Concerns the settlement of accounts of certain state agents. Purposes of act have been accomplished.

L. 1824, ch. 250.—Obsolete. Directs the payment of the loan of 1818.

L. 1824, ch. 255.—Obsolete. Provides for borrowing money for the completion of the Erie and Champlain canals.

L. 1824, ch. 278.—Sections 1-6 were repealed by L. 1828, ch. 21, § 1, ¶ 420, 2d meeting. Section 7 confirms certain land sales in Jefferson county. Purposes of § 7 have been accomplished. Obsolete.

L. 1824, ch. 302.—Obsolete. Permits the canal commissioners to borrow certain moneys of the school fund.

L. 1824, ch. 311.—Obsolete. Provides for the investment of the state's surplus moneys then in the treasury.

L. 1824, ch. 333.—Obsolete. Provides for transfer of the fever hospital fund to the common school fund.

L. 1824, ch. 337.—Obsolete. Provides for the payment of certain government officers.

L. 1825, ch. 185.—Obsolete. Provides for the disposition of surplus moneys arising on land sales. Superseded by R. S., pt. 1, ch. 8, tit. 8, § 10.

L. 1825, ch. 272.—Obsolete. Authorizes loan for Oswego canal. Purposes of act have been accomplished.

L. 1825, ch. 292; L. 1840, chs. 37 and 161; L. 1841, chs. 194 and 219, § 4; L. 1842, ch. 34; L. 1843, ch. 49; L. 1844, ch. 314; L. 1846, ch. 326; L. 1848, ch. 216; L. 1849, ch. 232; L. 1851, ch. 501, and L. 1855, ch. 23.—These acts authorize the commissioners of the canal fund to borrow sums of money to meet the then existing expenses of constructing and maintaining the canals and provide for the repayment of the said loans. All are now obsolete.

L. 1825, ch. 321.—Obsolete. Authorizing deed from one loan commissioner in certain cases. Covered by L. 1897, ch. 413, § 86.

L. 1826, ch. 305.—Sections 2 and 4 were repealed by L. 1828, ch. 21, § 1, ¶ 488, 2d meeting. Section 1 confirms a certain payment, and § 3 provides for temporary use of certain funds. Obsolete.

L. 1827, ch. 228.—Sections 2-5 were repealed by L. 1828, ch. 21, § 1, ¶¶ 513 and 549. Section 1 provides for the transfer of certain moneys to the school fund. Purposes have been accomplished. Obsolete.

L. 1828, ch. 275.—Authorizes commissioners of canal fund to transfer certain canal funds and to borrow money for the completion of Oswego canal. Purposes of act have been accomplished. Obsolete.

L. 1828, ch. 300.—Obsolete. Authorizes sale of canal stock.

L. 1828, ch. 324.—Obsolete. Concerns the relief of the Niagara frontier sufferers.

L. 1829, ch. 91.—Section 2, pt., beginning "and instead" to end of section was repealed by L. 1836, ch. 470, § 1. Balance extends time for the payment of loans of state moneys, and provides when R. S., pt. 1, ch. 12, tit. 1, shall take effect; has served its purpose. Obsolete.

L. 1829, ch. 201.—Obsolete. Authorizes investment of school fund moneys in canal fund certificates. Purposes of act have been accomplished.

L. 1829, ch. 325.—Obsolete. Regulates the investment of certain state funds. Purposes of §§ 1-4 have been accomplished. Section 5 is superseded by L. 1897, ch. 413, § 61.

L. 1829, ch. 376, § 4.—Regulates drawing of money for clerk hire provided for by R. S., pt. 1, ch. 9, tit. 1, § 10. R. S., pt. 1, ch. 9, tit. 1, was repealed by L. 1892, ch. 683, § 90. Statute is, therefore, inoperative.

L. 1831, ch. 281.—Obsolete. Concerns the transfers of certain state funds.

L. 1831, ch. 323, § 3.—Obsolete. Provides for the distribution of certain state documents.

L. 1909, ch. 58.

Consolidators' notes.

L. 1832, ch. 118.—Obsolete. Relates to the loans of 1786, 1792 and 1808, and makes regulations concerning the loan commissioners. These matters are now covered by L. 1897, ch. 413.

L. 1832, ch. 164, § 1.—Obsolete. Authorizes the borrowing of money for certain canal purposes.

L. 1833, ch. 74.—Obsolete. Concerns the Suffolk county loan commissioners. Covered by L. 1897, ch. 413, §§ 83, 87.

L. 1834, ch. 59.—Obsolete. Concerns loans made for the construction of the Chenango canal.

L. 1834, ch. 130.—Obsolete. Authorizes loans to banks, and to citizens of the state to an amount not exceeding \$6,000,000.

L. 1835, ch. 182.—Obsolete. Authorizes borrowing money for the Chemung canal.

L. 1836, ch. 464.—Obsolete. Authorizes loan for the Chenango canal.

L. 1836, ch. 470.—Obsolete. Authorizes loan commissioners to reloam.

L. 1837, ch. 63.—Obsolete. Authorizes payments to the commissioners of the canal fund.

L. 1837, ch. 150, § 18.—L. 1880, ch. 517, § 2, purports to amend R. S., pt. 1, ch. 9, tit. 14, § 20, but in fact amends L. 1837, ch. 150, § 18, which was printed in the fourth edition of the Revised Statutes and treated by the author as R. S., pt. 1, ch. 9, tit. 14, § 20.

L. 1838, ch. 333, § 18.—Obsolete.

The section cited provided that the state treasurer "may" pay the clerks in the state offices monthly. At the time, the Revised Statutes, pt. 1, ch. 9, tit. 1, § 10, provided for their payment quarterly. The Executive Law gives to the state officers the right to expend the appropriations for clerk hire, subject, of course, to the requirements of the Civil Service Law. They may pay monthly if they choose, and since the repeal of the Revised Statutes, pt. 1, ch. 9, tit. 1, by L. 1892, ch. 683, this act cited is unnecessary.

L. 1839, ch. 198.—Obsolete. Extends time for payment of loan of state moneys.

L. 1840, ch. 97.—Concerning loan commissioners of Montgomery county. Superseded by L. 1897, ch. 413, § 83.

L. 1840, ch. 194.—Obsolete. Authorizes loan for certain public works.

L. 1840, ch. 268, §§ 1-12.—Obsolete. Refers to the canal fund. The management of the canal fund is now wholly governed by L. 1897, ch. 413, and its amendments.

L. 1840, ch. 358.—Obsolete. Provides for payment on loans of the state credit and for deposits of the canal moneys. Section 2 was amended to read as follows by L. 1874, ch. 500, § 1. Section 1 is covered by L. 1897, ch. 413, § 7.

L. 1841, ch. 49.—Obsolete. Concerning loan commissioners of Tioga county. Superseded by L. 1897, ch. 413, § 83.

L. 1841, ch. 238.—Sections 1 and 2 are superseded by L. 1897, ch. 413, § 63. Section 3 relates to fees of canal appraisers. Office was abolished by L. 1883, ch. 205, § 12. Section 4 provides for disposition of tolls received on Oneida Lake canal and feeder. Canal tolls were abolished by art. 7, § 9, of the Constitution. Sections 5-7 contain temporary provisions.

L. 1843, ch. 240, § 2.—Obsolete. Provides for the investment of certain surplus canal tolls.

L. 1845, ch. 164.—Obsolete. Appropriates certain moneys to the common school fund.

L. 1847, ch. 17.—Obsolete. Authorizes the loan commissioners of Putnam county to sell certain real estate.

L. 1847, ch. 18.—Obsolete. Makes appropriation for certain canal purposes.

L. 1847, ch. 99.—Provides for furnishing deed to purchasers of foreclosed mortgaged property. Superseded by L. 1897, ch. 413, § 90.

L. 1847, ch. 293.—Obsolete. Concerns the payment of Suffolk county loans.

L. 1847, ch. 438.—Obsolete. Relates to extension of time for payment of certain bonds.

L. 1849, ch. 225.—Obsolete. Authorizes the issue of bonds for the canal fund.

L. 1850, ch. 375, § 2.—Obsolete. Defines the canal debt.

L. 1851, ch. 285.—Obsolete. Appropriates for canal expenses and debts.

L. 1851, ch. 351.—Obsolete. Appropriates from revenues of canals.

L. 1851, ch. 410.—Obsolete. Appropriates for certain hospitals.

L. 1851, ch. 454.—Obsolete. Provides that certain sums be paid annually for state library and other purposes.

L. 1852, ch. 315.—Obsolete. Statute cited reduces state tax provided for by L. 1842, ch. 114. L. 1842, ch. 114, was repealed by L. 1855, ch. 335, § 4.

L. 1853, ch. 222.—Obsolete. Makes appropriation for a schoolhouse for the St. Regis Indians.

L. 1853, ch. 254.—Obsolete. Appropriates for certain expenses of government then existing.

L. 1853, ch. 402.—Provides for the instruction of school teachers. Superseded by L. 1855, ch. 410.

L. 1855, ch. 335, §§ 2-4.—Section 2 appropriates for canal fund. Section 3 gives power to borrow for canal fund and is superseded by L. 1897, ch. 413, § 65. Obsolete. Makes appropriation to, and gives power to borrow for, the canal fund. Section 4 is a repeal.

L. 1856, ch. 3.—Provides for sale of lands foreclosed by loan commissioners. Section 1 was amended to read as follows by L. 1873, ch. 73, § 2. Section 2 makes provisions of act applicable to certain mortgages. Section 3 states when act shall take effect. Obsolete.

L. 1857, ch. 592.—Obsolete. Appoints a commission to examine state funds and accounts and report to legislature.

L. 1858, ch. 263.—Obsolete. Authorizes the payment of interest on canal claims.

L. 1859, ch. 149, § 5.—Obsolete. Authorizes the investment of the canal debt sinking fund. Superseded by L. 1897, ch. 413, § 61.

L. 1860, ch. 213, § 6.—Obsolete. Authorizes the comptroller to make temporary loan.

L. 1860, ch. 490.—Section 1 authorizes the payment of interest on canal claims and has served its purpose. Section 2 was amended so as to read as follows by L. 1862, ch. 462, § 1. Section 3 covered by Canal Law. Section 4 provides when act shall take effect and is obsolete.

L. 1860, ch. 494.—Obsolete. Concerning a tax and the application of the same to the canal debt.

L. 1861, ch. 102.—Obsolete. Authorizes the investment of the surplus of the canal debt sinking fund.

L. 1861, ch. 227.—Obsolete. Concerning certain service claims in the war of 1812.

L. 1862, ch. 25.—Obsolete. Authorizes the comptroller to borrow money for the payment of volunteers in the United States army.

L. 1862, ch. 29.—Obsolete. Expediting payment to the volunteers in the United States army.

L. 1862, ch. 223.—Provides for the appointment of commissioners of public accounts and prescribes their duties. Office abolished by L. 1872, ch. 541, § 1.

L. 1862, ch. 462.—Obsolete. Directs treasurer to pay interest on certain existing canal debts.

L. 1863, ch. 73.—L. 1897, ch. 413, § 110, purports to repeal L. 1863, ch. 731, except § 9. In fact there were but 515 chapters enacted that year. Doubtless ch. 73 was the act intended to be repealed. Section 9 confirms sales made by loan commissioners and is obsolete.

L. 1864, ch. 170, § 4.—Obsolete. Authorizes the investment of the surplus of the canal debt sinking fund to meet a certain appropriation.

L. 1864, ch. 182, §§ 4, 5, and L. 1864, ch. 185, § 4.—Obsolete. Authorizes the comptroller to borrow certain sums of money in anticipation of certain taxes.

L. 1864, ch. 186, § 3.—Obsolete. Authorizes the investment of the surplus of the canal debt sinking fund to meet a certain appropriation.

L. 1864, ch. 266.—Obsolete. Provides for paying interest on certain then existing canal drafts.

L. 1864, ch. 280, §§ 2, 3.—Section 2 concerns the payment of certain appropriations. Section 3 covered by Executive Law. Obsolete.

L. 1864, ch. 304.—Obsolete. Provides for repayment from the general fund to the free school fund.

L. 1864, ch. 305, § 4.—Obsolete. Authorizes the transfer of certain surplus revenues of the canals.

L. 1864, ch. 347, §§ 1, 3.—Obsolete. Requires the comptroller to audit all claims and demands appropriated by § 2 of statute cited except fixed salaries.

L. 1865, ch. 226, § 3.—Obsolete. Relates to Civil War bounties.

L. 1865, ch. 294.—Obsolete. Provides for additional compensation of certain officials. Superseded by subsequent legislation regulating the various state departments.

L. 1865, ch. 325, §§ 1-7.—Section 2 was amended so as to read as follows by L. 1867, ch. 488, § 1. The act provides means for the payment of Civil War bounties. Obsolete.

L. 1909, ch. 58.

Consolidators' notes.

L. 1865, ch. 535, § 6.—Obsolete. Concerns the original appropriation of land scrip funds to the Cornell University.

L. 1866, ch. 209.—Obsolete. Concerning the style and form of state bonds issued by comptrollers to obtain money to pay Civil War bounties.

L. 1867, ch. 433.—Obsolete. Provides the interest and a sinking fund for payment of Civil War bounties.

L. 1867, ch. 704.—Obsolete. Concerning the sale of lands by the commissioners of the United States deposit fund. Superseded by L. 1897, ch. 413, § 86.

L. 1868, ch. 554.—Obsolete. Concerning the Cornell Endowment Fund. Superseded by L. 1897, ch. 413, § 96.

L. 1868, ch. 830, § 3.—Superseded by L. 1869, ch. 645, § 3.

L. 1869, ch. 645, § 3.—Consolidated in State Finance Law, § 47.

L. 1869, ch. 689.—Spent. Authorizes expenditure of moneys for the instruction of teachers.

L. 1869, ch. 756.—Obsolete. Authorizes turning back into the treasury of moneys for the payment of certain unclaimed checks.

L. 1870, ch. 379.—Obsolete. Authorize commissioners of the canal fund to borrow money and the levy of a state tax for the payment of the canal and general fund debt for which tolls are pledged by the Constitution.

L. 1871, ch. 654, § 2.—Obsolete. Provides for the payment of canal contracts.

L. 1871, ch. 718, § 3.—Obsolete. Requires institutions receiving state moneys to make annual reports, but applies only to institutions entitled to receive moneys by virtue of the chapter of which this section is a part. A similar but broader provision has been made § 51 of the State Finance Law.

L. 1873, ch. 760, § 2, pt., last paragraph beginning with the words "The comptroller is authorized at all times" to end of paragraph. Spent. The paragraph next succeeding the one cited from provides that the expense of the visitation and examination authorized shall be paid from the appropriation made by the same act. This indicates that the authority was to be temporary and for the fiscal year for which the appropriation was made.

L. 1874, ch. 323, § 2, pt., 3d from last paragraph. Spent. The succeeding paragraph to the one cited from provides that the expense incurred under that part cited shall be paid from the moneys appropriated by the act. This indicating that it was intended to be but temporary.

L. 1874, ch. 500.—Obsolete. Authorizes the canal board to designate a bank to receive deposit of canal tolls.

L. 1875, ch. 260, § 1, pt., relating to canal tolls. Obsolete; canal tolls having been abolished.

L. 1876, ch. 192, § 1, pt., last paragraph. Superseded by L. 1897, ch. 413, § 35, as added by L. 1899, ch. 580, § 1.

L. 1876, ch. 302.—Obsolete. Requires the comptroller to audit and allow certain accounts for prison supplies prior to January 1st, 1876.

L. 1883, ch. 364.—Authorizes governor, lieutenant-governor and speaker of assembly to sell unnecessary furniture theretofore furnished any state department and provides what disposition shall be made of proceeds. Superseded by L. 1903, ch. 342.

L. 1883, ch. 517.—Obsolete. Provides for the payment of the expenses of the commissioners of emigration. Temporary.

L. 1884, ch. 250.—Obsolete. Imposes and levies a tax for the sinking funds, and authorizes the investment of the revenues of such funds.

L. 1885, ch. 267, §§ 5, 6.—Obsolete. These sections correct errors in L. 1880, ch. 517, since repealed.

L. 1886, ch. 330, § 1, pt., beginning at "The managers, trustees," to end of section. Obsolete. Concerns the reports of state institutions; superseded by L. 1897, ch. 413, § 17.

L. 1887, ch. 460, § 1, pt., last seven paragraphs beginning with "The managers, trustees." Obsolete. This is a part of the annual supply bill and prohibits officers of state institutions from being interested in any purchase, sale or contract of any such institution, and provides for reports, forms of accounts and the regulation of certain state institutions. It is superseded by L. 1897, ch. 413, §§ 12, 16-20.

L. 1887, ch. 637.—Consolidated in State Finance Law, § 103.

L. 1889, ch. 570, § 1, pt., last seven paragraphs beginning "The manager, trustee or." Obsolete. This is a part of the annual supply bill and provides for reports, forms of accounts and regulation of certain state institutions. Superseded by L. 1897, ch. 413, §§ 12, 16-20.

L. 1892, ch. 651, § 9.—Consolidated in State Finance Law, § 44.

L. 1894, ch. 572, § 5.—Obsolete. Provides for borrowing money for the requirements of the superintendent of public works. The sum borrowed to be refunded from moneys received from taxes levied to meet the appropriations made by this act. Temporary.

L. 1897, ch. 413.—Former State Finance Law as affected by subsequent legislation is consolidated in the State Finance Law under the same numbering of sections except where the numbers are changed in eliminating lettered sections or incorporating independent statutes into new sections.

L. 1897, ch. 444.—Sections 1 and 2, except so much of each section as relates to counties or municipal corporations, consolidated in State Finance Law, § 43; so much as relates to counties or municipal corporations consolidated in General Municipal Law, § 86; section 3 repeals inconsistent acts and section 4 provides when act shall take effect.

L. 1898, ch. 360.—Section 1 was amended to read as follows by L. 1903, ch. 350, § 1; section 2 was amended to read as follows by L. 1906, ch. 575, § 1; section 7 was amended to read as follows by L. 1902, ch. 432, § 1; balance of act consolidated in State Finance Law, §§ 81, 89, 90.

L. 1899, ch. 32.—Consolidated in State Finance Law, § 42.

L. 1899, ch. 458.—Consolidated in State Finance Law, § 91.

L. 1899, ch. 479.—Consolidated in State Finance Law, § 38.

L. 1899, ch. 580.—Section 1, pt., adding § 37 to L. 1897, ch. 413, was amended to read as follows by L. 1899, ch. 715, § 1; balance of act consolidated in State Finance Law, §§ 35, 36.

L. 1901, ch. 457.—Section 2 was amended to read as follows by L. 1907, ch. 561, § 1; section 1 is consolidated in State Finance Law, § 19.

L. 1901, ch. 645, § 1, pt., second paragraph on page 1617 beginning "all fees, interest, and expenses" and ending "rejected by the comptroller." Obsolete. The paragraph from which the cited law is taken provides an appropriation for the controller to pay certain claims for local improvements made on property owned by the state.

Having in mind the provisions of § 22 of art. 3 of the State Constitution, it must be held that that part of the paragraph cited relates solely to the former and that it was intended to relate only to those claims for the payment of which the appropriation was made.

L. 1902, ch. 28.—Consolidated in State Finance Law, § 91.

L. 1902, ch. 59.—Consolidated in State Finance Law, § 39.

L. 1902, ch. 366.—Consolidated in State Finance Law, §§ 14, 55.

L. 1903, ch. 239.—Consolidated in State Finance Law, § 17.

L. 1903, ch. 350.—Consolidated in State Finance Law, § 81.

L. 1904, ch. 95.—Consolidated in State Finance Law, § 5.

L. 1904, ch. 448.—Consolidated in State Finance Law, § 41.

L. 1905, ch. 372.—Consolidated in State Finance Law, §§ 8, 62.

L. 1905, ch. 388.—Consolidated in State Finance Law, § 40.

L. 1905, ch. 504.—Consolidated in State Finance Law, § 4, subd. 6.

L. 1905, ch. 587.—Consolidated in State Finance Law, § 80.

L. 1906, ch. 575.—Consolidated in State Finance Law, § 87.

L. 1907, ch. 561.—Consolidated in State Finance Law, § 37.

Code Civil Procedure, § 20, pt., word "except" to end of section. Consolidated in State Finance Law, § 46.

Code Civil Procedure, § 39, pt., words "and the expense" to end of section. Consolidated in State Finance Law, § 46.

Code Civil Procedure, § 266, pt., last sentence. Consolidated in State Finance Law, § 46.

Code Civil Procedure, § 233, pt., last sentence. Consolidated in State Finance Law, § 46.

Code Civil Procedure, § 744, pt., relating to duty of comptroller. Consolidated in State Finance Law, § 4, subd. 8.

Code Civil Procedure, § 3295.—Consolidated in State Finance Law, § 46.

STATE FIRE MARSHAL.

Office abolished by L. 1915, ch. 4.

L. 1915, ch. 341.—An act to provide for the disposition of property in the custody of the director of the state library, formerly in the office of the state fire marshal.

Cross-references.

STATE HISTORIAN.

See Education L., §§ 1190–1198.

STATE HOSPITAL FOR CRIPPLED CHILDREN.

See State Charities Law, §§ 130–139.

STATE HOSPITAL FOR TUBERCULOSIS.

See State Charities Law, §§ 150–163.

STATE HOSPITALS FOR INSANE.

See Insanity Law.

STATE INDUSTRIAL SCHOOL.

For juvenile delinquents; State Charities Law, §§ 180–214. Sentences to; Penal L., § 2184.

§ 1.	Short title.	L. 1909, ch. 59.
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STATE LAW.

L. 1909, ch. 59.—“An act in relation to the sovereignty, boundaries, survey, great seal and arms of the state, congressional districts, senate districts, and apportionment of the members of assembly of this state, and enumeration of the inhabitants of the state, constituting chapter fifty-seven of the Consolidated Laws.”

[In effect February 17, 1909.]

CHAPTER LVII OF THE CONSOLIDATED LAWS.

STATE LAW.

- Article 1. Short title (§ 1).
2. State boundaries (§§ 2–10).
 3. Cessions to the United States (§§ 20–37).
 4. Purchase and acquisition of land by the United States (§§ 50–57).
 - 4a. Acquisition of land for public defense (§§ 58–59h).
 5. Entry upon lands for purpose of United States survey (§ 60).
 6. Arms and great seal of state (§§ 70–74).
 7. Congressional districts.
 8. Senate districts and apportionment of the members of assembly of the state (§§ 120–122).
 9. Enumeration of the inhabitants of the state (§§ 140–158).
 10. Laws repealed; when to take effect (§§ 170, 171).

ARTICLE I.

SHORT TITLE.

Section 1. Short title.

§ 1. Short title.—This chapter shall be known as the “State Law.”

Source.—Former State L. (L. 1892, ch. 678) § 1.

Consolidators’ general note.—The State Law [L. 1892, ch. 678] being ch. 2 of the “General Laws,” covered the following subjects:

The state boundaries.

Cessions to the United States.

The arms and great seal of the state.

In the “Consolidated” State Law will be found additional subjects which appear to be germane and which should be classified under the title of State Law.

The following list of statutes which have been consolidated will show the scope of the State Law submitted:

L. 1880, ch. 29. [Cession to United States.]

L. 1892, ch. 157. [Cession to United States.]

L. 1909, ch. 59.	State boundaries.	§ 2.
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- L. 1892, ch. 505. [Cession to United States.]
- L. 1892, ch. 698. [The State Law.]
- L. 1903, ch. 18. [Cession to United States.]
- L. 1893, ch. 22. [Cession to United States.]
- L. 1893, ch. 98. [Cession to United States.]
- L. 1893, ch. 218. [Cession to United States.]
- L. 1893, ch. 261. [Cession to United States.]
- L. 1893, ch. 628. [Cession to United States.]
- L. 1895, ch. 193. [Cession to United States.]
- L. 1896, ch. 15. [Cession to United States.]
- L. 1896, ch. 18. [Cession to United States.]
- L. 1896, ch. 391. [Purchase and acquisition of land by United States.]
- L. 1899, ch. 463. [Cession to United States.]
- L. 1900, ch. 308. [Cession to United States.]
- L. 1900, ch. 699. [Cession to United States.]
- L. 1901, ch. 46. [Cession to United States.]
- L. 1901, ch. 541. [Cession to United States.]
- L. 1901, ch. 591. [Congressional districts.]
- L. 1902, ch. 298. [Congressional district.]
- L. 1902, ch. 363. [Cession to United States.]
- L. 1903, ch. 35. [Cession to United States.]
- L. 1903, ch. 54. [Cession to United States.]
- L. 1903, ch. 107. [Cession to United States.]
- L. 1904, ch. 373. [Cession to United States.]
- L. 1904, ch. 619. [Cession to United States.]
- L. 1905, ch. 82. [Cession to United States.]
- L. 1905, chs. 83, 144. [Enumeration of inhabitants of state.]
- L. 1905, ch. 380. [Entry upon lands for purpose of U. S. survey.]
- L. 1907, ch. 727. [Senate districts and apportionment of members of assembly.]

ARTICLE II.

STATE BOUNDARIES.

- Section 2. Connecticut boundary line.
- 3. Massachusetts boundary line.
 - 4. Vermont boundary line.
 - 5. Canada boundary line.
 - 6. Pennsylvania boundary line.
 - 7. New Jersey boundary line.
 - 8. Restoration of monuments.
 - 9. Saving clause.
 - 10. Defense of state sovereignty and jurisdiction.

§ 2. Connecticut boundary line.—The boundary line between the states of New York and Connecticut is as follows:

Commencing at a granite monument (No. 1), at the northwest corner of the state of Connecticut, marking the corner of Massachusetts, New York and Connecticut, in latitude 42° 02' 58" .427 and longitude 73° 29' 15" .959; thence south 2° 42' 30" west 30,569 feet to a granite monument (No. 12) 470 feet south of the Bird Hill road between Millerton and Ore

Hill in latitude $41^{\circ} 57' 56''$.772 and longitude $73^{\circ} 29' 35''$.078; thence south $3^{\circ} 53' 44''$ west 15,846 feet to a monument (No. 18) in the south side of the highway from Millerton to Sharon along the north shore of Indian pond in latitude $41^{\circ} 55' 20''$.586 and longitude $73^{\circ} 29' 49''$.318; thence south $2^{\circ} 47' 51''$ west 10,681 feet to a monument (No. 21) on the cliff north of Webatuck creek in latitude $41^{\circ} 53' 35''$.190 and longitude $73^{\circ} 29' 56''$.210; thence south $4^{\circ} 39' 01''$ west 10,683 feet to a monument (No. 24) in the rear of R. E. Randall's house on the east road from Sharon Valley to Leedsville in latitude $41^{\circ} 51' 49''$.995 and longitude $73^{\circ} 30' 07''$.652; thence south $3^{\circ} 49' 10''$ west 26,405 feet to a monument (No. 32) on the westerly slope of a rocky hillside at the corner of the towns of Sharon and Kent in latitude $41^{\circ} 47' 29''$.709 and longitude $73^{\circ} 30' 30''$.871; thence south $3^{\circ} 52' 35''$ west 10,457 feet to a monument (No. 35) on the shoulder of a mountain northeast of Bog Hollow, in latitude $41^{\circ} 45' 46''$.637 and longitude $73^{\circ} 30' 40''$.199; thence south $3^{\circ} 06' 18''$ west 16,045 feet to a monument (No. 41) at the easterly edge of a large pasture north of Preston mountain, known as the Chapel lots, in latitude $41^{\circ} 43' 08''$.354 and longitude $73^{\circ} 30' 51''$.658; thence south $3^{\circ} 57' 03''$ west 10,657 feet to a monument (No. 45) at the southerly end of Schaghticoke mountain in latitude $41^{\circ} 41' 23''$.320 and longitude $73^{\circ} 31' 01''$.335; thence south $2^{\circ} 41' 41''$ west 10,534 feet to a monument (No. 48) on the northwesterly slope of Ten-Mile hill in latitude $41^{\circ} 39' 39''$.359 and longitude $73^{\circ} 31' 07''$.860; thence south $3^{\circ} 31' 33''$ west 21,140 feet to a monument (No. 55) at the northerly end of a rocky hill about a mile south of the northeast corner of the town of Pawling, New York, in latitude $41^{\circ} 36' 10''$.894 and longitude $73^{\circ} 31' 24''$.972; thence south $4^{\circ} 24' 52''$ west 10,785 feet to a monument (No. 59) in a field east of a right angle in the road from Quaker Hill to Sherman in latitude $41^{\circ} 34' 24''$.659 and longitude $73^{\circ} 31' 35''$.893; thence south $3^{\circ} 52' 52''$ west 10,520 feet to a monument (No. 64) on a ledge falling southwest to a brook in the southwestern part of the town of Sherman in latitude $41^{\circ} 32' 40''$.963 and longitude $73^{\circ} 31' 45''$.257; thence south $4^{\circ} 28' 48''$ west 10,410 feet to a monument (No. 68) on Cranberry mountain in latitude $41^{\circ} 30' 58''$.424 and longitude $73^{\circ} 31' 55''$.946; thence south $2^{\circ} 24' 38''$ west 10,617 feet to a monument (No. 72) on the northerly slope of a hill a mile south of Haviland Hollow in latitude $41^{\circ} 29' 13''$.627 and longitude $73^{\circ} 32' 01''$.813; thence south $3^{\circ} 03' 12''$ west 20,731 feet to a monument (No. 80) in a mowed field southeast of an angle in the road from Brewster to Ball pond in latitude $41^{\circ} 25' 49''$.108 and longitude $73^{\circ} 32' 16''$.309; thence south $4^{\circ} 53' 12''$ west 10,279 feet to a monument (No. 84) on the northerly side of a rocky summit northwest of Mill Plain in latitude $41^{\circ} 24' 07''$.915 and longitude $73^{\circ} 32' 27''$.798; thence south $2^{\circ} 45' 48''$ west 10,527 feet to a monument (No. 89) in a swampy pasture south of a right angle in a back road which runs along the line between the towns of Danbury and Ridgefield in latitude $41^{\circ} 22' 24''$.030 and

longitude 73° 32' 34" .456; thence south 4° 36' 39" west 10,878 feet to a monument (No. 91) in a swamp near Mopus brook in latitude 41° 20' 36" .900 and longitude 73° 32' 45" .920; thence south 4° 12' 16" west 10,493 feet to a monument (No. 96) south of a ledge on Titicus mountain in latitude 41° 18' 53" .507 and longitude 73° 32' 56" .001; thence south 6° 32' 21" west 7,214 feet to a monument (No. 98) known as the Ridgefield angle on a steep side hill sloping toward South pond in latitude 41° 17' 42" .690 and longitude 73° 33' 06" .764; thence south 32° 46' 06" east 14,109 feet to a monument (No. 103) in a swamp near a small brook in latitude 41° 15' 45" .460 and longitude 73° 31' 26" .775; thence south 32° 41' 46" east 10,443 feet to a monument (No. 106) at the westerly side of a rocky ridge near the southwest corner of Ridgefield in latitude 41° 14' 18" .626 and longitude 73° 30' 12" .940; thence south 32° 02' 28" east 11,047 feet to a monument (No. 109) known as the Wilton angle in woodland northwest of Bald Hill in latitude 41° 12' 46" .101 and longitude 73° 28' 56" .263; thence south 59° 59' 58" west 9,588 feet to a monument (No. 112) on the south side of a short cross road leading west from the Vista road in latitude 41° 11' 58" .721 and longitude 73° 30' 44" .877; thence south 57° 58' 49" west 6,002 feet to a monument (No. 115) on the northeasterly slope of a low, wooded hill one-half mile west of Mud pond and northeast of Sellick's Corners in latitude 41° 11' 27" .272 and longitude 73° 31' 51" .438; thence south 59° 09' 58" west 15,983 feet to a monument (No. 120) on the summit of a rocky ridge half way between two large swamps, northeast of long ridge in latitude 41° 10' 06" .294 and longitude 73° 34' 50" .871; thence south 58° 56' 22" west 21,193 feet to a monument (No. 127) in level woodland west of a low hill west of Banksville in latitude 41° 08' 18" .189 and longitude 73° 38' 48" .129; thence south 58° 32' 47" west 26,355 feet to a rough granite monument (No. 140) known as the Duke's Trees angle, set in concrete with its top below the roadway called King street in latitude 41° 06' 02" .205 and longitude 73° 43' 41" .778; thence south 31° 29' 41" east 11,440 feet to a monument (No. 148) 300 feet north of the road leading west from King street south of Rye lake in latitude 41° 04' 25" .814 and longitude 73° 42' 23" .747; thence south 32° 10' 57" east 14,975 feet to a monument (No. 153) at the east side of King street 1,000 feet north of Ridge street in latitude 41° 02' 20" .570 and longitude 73° 40' 39" .666; thence south 32° 07' 30" east 11,461 feet to a granite monument (No. 158) set at the north side of Byram bridge in a concrete pier on a granite ledge known since 1684 as the Great Stone at the wading place in latitude 41° 00' 44" .662 and longitude 73° 39' 20" .172; thence south 9° 53' 43" west 835 feet to a brass bolt and plate (No. 159) set in the top of a large boulder in Byram river in latitude 41° 00' 36" .535 and longitude 73° 39' 22" .044; thence south 18° 56' 41" west 3,735 feet to angle No. 161 in Byram river in latitude 41° 00' 1" .626 and longitude 73° 39' 37" .863, this tangent being produced and referenced on the shore by a brass bolt and

plate leaded into the rock on a steep hill; thence south $12^{\circ} 57' 02''$ east 965 feet to angle No. 162 in Byram river in latitude $40^{\circ} 59' 52''$.335 and longitude $73^{\circ} 39' 35''$.044, the line being produced and referenced by a bolt and plate in the rock on a hill east of the river; thence south $5^{\circ} 14' 08''$ west 950 feet to angle No. 163 in Byram river in latitude $40^{\circ} 59' 42''$.995 and longitude $73^{\circ} 39' 36''$.173, the line being produced and referenced by a bolt and plate in the ledge on the west shore of the river; thence south $9^{\circ} 10' 19''$ east 692 feet to angle No. 164 in Byram river in latitude $40^{\circ} 59' 36''$.249 and longitude $73^{\circ} 39' 34''$.736, the line being produced and referenced by a bolt and plate in the shore; thence south $34^{\circ} 35' 04''$ east 684 feet to angle No. 165 in Byram river in latitude $40^{\circ} 59' 30''$.682 and longitude $73^{\circ} 39' 29''$.671, both ends of this and the three subsequent tangents being produced and referenced by brass bolts and plates set in the ledge on the shore of the river; thence south $26^{\circ} 00' 02''$ east 229 feet to angle No. 166 in latitude $40^{\circ} 59' 28''$.646 and longitude $73^{\circ} 39' 28''$.360; thence south $5^{\circ} 26' 38''$ west 402 feet to angle No. 167 in latitude $40^{\circ} 59' 24''$.694 and longitude $73^{\circ} 39' 28''$.857; thence south $50^{\circ} 49' 51''$ west 815 feet to angle No. 168 in latitude $40^{\circ} 59' 19''$.608 and longitude $73^{\circ} 39' 37''$.096; thence south $30^{\circ} 01' 41''$ east 1,924 feet to angle No. 169, a point in the center of the channel in line with the breakwater at Lyon's or Byram point in latitude $40^{\circ} 59' 03''$.152 and longitude $73^{\circ} 39' 24''$.546, the northerly end of this tangent being produced back and referenced by a brass bolt and plate in the ledge overlooking the harbor; thence south 45° east 17,160 feet or three and one-quarter miles to angle No. 170 in latitude $40^{\circ} 57' 03''$.228 and longitude $73^{\circ} 36' 46''$.418, the first angle point in Long Island sound described by the joint commissioners of New York and Connecticut by a memorandum of agreement dated December eighth, eighteen hundred and seventy-nine; thence in a straight line (the arc of a great circle) north $74^{\circ} 32' 32''$ east 434,394 feet to a point (No. 171) in latitude $41^{\circ} 15' 31''$.321 and longitude $72^{\circ} 05' 24''$.685, four statute miles true south of New London lighthouse; thence north $58^{\circ} 58' 43''$ east 22,604 feet to a point (No. 172) in latitude $41^{\circ} 17' 26''$.341 and longitude $72^{\circ} 01' 10''$.937, marked on the United States coast survey chart of Fisher's Island sound annexed to said memorandum,—which point is on the long east $\frac{3}{4}$ north sailing course drawn on said map 1,000 feet true north from the Hammock or North Dumpling lighthouse; thence following said east $\frac{3}{4}$ north sailing course north $73^{\circ} 37' 42''$ east 25,717 feet to a point (No. 173) in latitude $41^{\circ} 18' 37''$.835 and longitude $71^{\circ} 55' 47''$.626, marked No. 2 on said map; thence south $70^{\circ} 07' 26''$ east 6,424 feet toward a point marked No. 3 on said map until said line intersects the westerly boundary of Rhode Island at a point (No. 174) in latitude $41^{\circ} 18' 16''$.249 and longitude $71^{\circ} 54' 28''$.477 as determined by the joint commissioners of Connecticut and Rhode Island by a memorandum of agreement dated March twenty-fifth, eighteen hundred and eighty-seven.

The geodetic positions given in this description are based on Clark's spheroid of eighteen hundred and sixty-six and the astronomical data adopted by the United States coast and geodetic survey in eighteen hundred and eighty and are computed from data given in appendix number eight to the report of the said survey for eighteen hundred and eighty-eight, entitled "Geographical Positions in the State of Connecticut."

The boundary line hereinbefore described and determined which has been located and defined as, and in the manner, provided by section eight of this chapter is fully and accurately laid down on duplicate maps, one copy of which has been deposited with the secretary of state of the state of New York and the other copy thereof with the secretary of state of the state of Connecticut.

Nothing herein contained shall be construed to affect any existing titles to property, corporeal or incorporeal, held under grants heretofore made by either of said states, nor to affect existing rights which said states or either of them or which the citizens of either of said states may have by grant, letters-patent or prescription of fishing in the waters of said sound, whether for shell or floating fish irrespective of the boundary line hereby established, it not being the purpose hereof to define, limit or interfere with any such right, rights or privileges whatever the same may be.

The governor is authorized and requested to transmit a copy of this act to the governor of the state of Connecticut, and upon receiving acknowledgment of its receipt by the state of Connecticut the governor of this state shall cause such acknowledgment to be filed in the office of the secretary of state.

The governor of this state is authorized in concurrence with the governor of the state of Connecticut to communicate to congress the action of the two states on this subject and to request the approval of congress of the boundaries thus established and monumented. (*Amended by L. 1912, ch. 352, and L. 1913, ch. 18.*)

Source.—Former State L. (L. 1892, ch. 678) § 2; originally revised from R. S. pt. 1, ch. 1, tit. 1, § 1; L. 1879, ch. 166; L. 1880, ch. 213.

See *People v. Gillette*, 33 St. Rep. 352, 11 N. Y. Supp. 461 (1890).

§ 3. **Massachusetts boundary line.**—The boundary line between the states of New York and Massachusetts is as follows: Beginning at bound one, a granite monument set in ledge on the side of a wooded mountain peak six hundred and nine feet east of Ryan bush road. in latitude forty-two degrees two minutes fifty-eight and four hundred and twenty-seven thousandths seconds north of the equator, and longitude seventy-three degrees twenty-nine minutes fifteen and nine hundred and fifty-nine thousandths seconds west from Greenwich, and marking the northwest corner of Connecticut, a corner of the commonwealth of Massachusetts, and a corner of the state of New York; thence on an azimuth of ninety degrees forty-three minutes forty-nine seconds twenty-six hundred and twenty-

four feet to bound three, a granite monument set in ledge on the steep westerly slope of a wooded mountain, in latitude forty-two degrees two minutes fifty-eight and seven hundred and fifty-six thousandths seconds and longitude seventy-three degrees twenty-nine minutes and fifty and seven hundred and thirty-seven thousandths seconds, at the southwest corner of Massachusetts, also in the eastern line of New York and marking a corner of the towns of Mount Washington in Massachusetts, and Ancram and Northeast in New York; thence on an azimuth of one hundred and sixty-seven degrees eight minutes fifteen seconds, thirteen thousand six hundred and forty-nine feet to bound nine, a granite monument set in ledge on the westerly wooded slope of Alandar mountain about a quarter of a mile west of its summit, in latitude forty-two degrees five minutes ten and two hundred and five thousandths seconds and longitude seventy-three degrees thirty minutes thirty-one and thirty-one thousandths seconds, at the corner of Mount Washington in Massachusetts and Copake in New York; thence on an azimuth of one hundred and ninety-five degrees twelve minutes twenty-two seconds, two hundred forty-nine thousand two hundred and forty-six feet, by the towns of Mount Washington, Egremont, Alford, West Stockbridge, Richmond, Hancock and Williamstown in Massachusetts, and Copake, Hillsdale, Austerlitz, Canaan, New Lebanon, Stephentown, Berlin and Petersburg in New York, to bound one hundred and twelve, a granite monument set in ledge and earth on an open easterly slope about seventy-five feet west of a private roadway, in latitude forty-two degrees forty-four minutes forty-five and two hundred and one thousandths seconds and longitude seventy-three degrees fifteen minutes fifty-four and nine hundred and four thousandths seconds, at the northwest corner of Massachusetts, also in the east line of New York and in the south line of Vermont, and marking a corner in the boundaries of the towns of Williamstown in Massachusetts, Petersburg in New York, and Pownal in Vermont. The term "azimuth," as used in this description, is the angle which a line makes at its point of beginning with the true meridian, reckoning from the south around by the west. In addition to the monuments at the ends of the above mentioned straight lines other monuments have been set at the points of intersection of the above described straight lines with highways, railroads and boundary lines of three towns in New York and seven towns in Massachusetts; also at mile points, excepting the twenty-second and twenty-third miles, which are unmarked. These additional marks are described as follows: Beginning at the said northwest corner of Connecticut; thence westerly about six hundred and nine feet to a monument on the west side of Ryan Bush road; thence westerly about two thousand and fifteen feet to bound three, at the southwest corner of Massachusetts previously described; thence northwesterly about twenty-six hundred and fifty-six feet to a monument marking the first mile point; thence northwesterly about forty-eight hundred and fifty-five feet to a monument on the north side of the Roberts road; thence northwesterly

about three hundred and thirty feet to a monument at the corner of Ancram, Copake and Mount Washington; thence northwesterly about ninety-five feet to a monument marking the second mile point; thence northwesterly about fifty-two hundred and eighty feet to a monument marking the third mile point; thence northwesterly about four hundred and thirty-three feet to bound nine, on Alandar mountain previously described; thence northerly about thirty-four hundred and eighty-six feet to a monument at the boundary summit of the Bashbish mountain; thence northerly about thirteen hundred and sixty-one feet to a monument marking the fourth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the fifth mile point; thence northerly about twelve hundred and nineteen feet to a monument on the north side of the Bashbish road; thence northerly about twenty-five hundred and seventy-six feet to a monument at the boundary summit of Cedar mountain; thence northerly about fourteen hundred and eighty-five feet to a monument marking the sixth mile point; thence northerly about twenty-eight hundred and forty-eight feet to a monument at the boundary summit of Dugway hill; thence northerly about nine hundred and eighty-five feet to a monument on the north side of the Mount Washington-Hillsdale road; thence northerly about fourteen hundred and forty-seven feet to a monument marking the seventh mile point; thence northerly about six hundred and seventy-seven feet to a monument at the boundary summit of Mount Prospect; thence northerly about forty-five hundred and ninety-four feet to a monument at the corner of Copake, Egremont and Mount Washington; thence northerly about nine feet to a monument marking the eighth mile point; thence northerly about nine hundred and seventy feet to a monument at the boundary summit of Mount Fray; thence northerly about forty-three hundred and ten feet to a monument marking the ninth mile point; thence northerly about fourteen hundred and fifty-nine feet to a monument on the north side of the Hillsdale-South Egremont road; thence northerly about four hundred and seventy-eight feet to a monument at the corner of Copake, Egremont and Hillsdale; thence northerly about thirty-three hundred and forty-three feet to a monument marking the tenth mile point; thence northerly about twenty-seven hundred and eighty-six feet to a monument on the north side of the Hillsdale-North Egremont road; thence northerly about twenty-four hundred and ninety-four feet to a monument marking the eleventh mile point; thence northerly about forty-four hundred and eight feet to a monument on the south side of the North Egremont-North Hillsdale road; thence northerly about eight hundred and seventy-two feet to a monument marking the twelfth mile point; thence northerly about twenty-five hundred and forty-three feet to a monument at the corner of Alford, Egremont and Hillsdale; thence northerly about three hundred and seventy-three feet to a monument on the north side of the Whites Hill road; thence northerly about twenty-three hundred and sixty-four feet

to a monument marking the thirteenth mile point; thence northerly about thirty-eight hundred and ninety-three feet to a monument on the south side of the Green River-North Egremont road; thence northerly about thirteen hundred and eighty-seven feet to a monument marking the fourteenth mile point; thence northerly about twenty-three hundred and five feet to a monument on the north side of the Green River-Great Barrington road; thence northerly about twenty-five hundred and thirty-two feet to a monument on the south side of a road; thence northerly about four hundred and forty-three feet to a monument marking the fifteenth mile point; thence northerly about thirty-five hundred and twenty-seven feet to a monument at a boundary summit; thence northerly about seventeen hundred and fifty-three feet to a monument marking the sixteenth mile point; thence northerly about fourteen hundred and ninety-four feet to a monument on the north side of the Alford-Green River road; thence northerly about thirty-four hundred and fifty-six feet to a monument on the north side of a road; thence northerly about three hundred and thirty feet to a monument marking the seventeenth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the eighteenth mile point; thence northerly about five hundred and fifty-three feet to a monument at the corner of Alford, Austerlitz and West Stockbridge; thence northerly about forty-seven hundred and twenty-seven feet to a monument marking the nineteenth mile point; thence northerly about fifteen hundred and ninety feet to a monument at the boundary summit of Mount Harvey; thence northerly about thirty-six hundred and ninety feet to a monument marking the twentieth mile point; thence northerly about twenty-nine hundred and two feet to a monument on the south side of the Austerlitz-West Stockbridge south road; thence northerly about three hundred and twenty-seven feet to a monument on the south side of a road; thence northerly about two thousand and eight feet to a monument on the south side of the Austerlitz-West Stockbridge north road; thence northerly about forty-three feet to a monument marking the twenty-first mile point; thence northerly about twenty-six hundred and thirty-five feet to a monument on the north side of a road; thence northerly about twenty-four hundred and nine feet to a monument on the south side of the Canaan-West Stockbridge road; thence northerly about one hundred and fifteen feet to a monument on the Boston and Albany railroad; thence northerly about one hundred and sixty-six feet to a monument on the north side of the Canaan-Richmond Furnace south road; thence northerly about three hundred and ninety-one feet to a monument at the corner of Canaan, Richmond and West Stockbridge; thence northerly about forty-eight hundred and thirty-four feet to a monument on the south side of the Canaan-Richmond Furnace north road; thence northerly about eight hundred and twenty feet to a monument on the east side of the Cunningham Hill road; thence northerly about eight hundred and ninety-seven feet to

a monument at the boundary summit of Cunningham hill; thence northerly about thirty-five hundred and seventy-three feet to a monument marking the twenty-fourth mile point; thence northerly about one hundred and sixty-seven feet to a monument on the south side of the Canaan-Richmond road; thence northerly about twenty-eight hundred and thirteen feet to a monument on the west side of a road; thence northerly about twelve hundred and eighty-five feet to a monument on the south side of the Canaan-Pittsfield road; thence northerly about one thousand and fifteen feet to a monument marking the twenty-fifth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the twenty-sixth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the twenty-seventh mile point; thence northerly about eighteen hundred and ninety-nine feet to a monument at the corner of Canaan, Hancock and Richmond, on Perry's Peak; thence northerly about thirty-three hundred and eighty-one feet to a monument marking the twenty-eighth mile point; thence northerly about seventeen hundred and ninety-two feet to a monument on the south side of the Mount Lebanon-Pittsfield road; thence northerly about eighty feet to a monument on the north side of the Mount Lebanon-Pittsfield road; thence northerly about thirty-three hundred and twenty-four feet to a monument on the north side of the state highway between Pittsfield and New Lebanon; thence northerly about eighty-four feet to a monument marking the twenty-ninth mile point; thence northerly about thirty-three hundred and fifteen feet to a monument at the boundary summit of Mount Lebanon; thence northerly about nineteen hundred and sixty-five feet to a monument marking the thirtieth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the thirty-first mile point; thence northerly about two hundred and fifty-six feet to a monument on the north side of the old Lebanon Springs-Pittsfield road; thence northerly about eleven hundred and eight feet to a monument on the south side of the Lebanon Springs-Pittsfield road; thence northerly about thirty-nine hundred and sixteen feet to a monument marking the thirty-second mile point; thence northerly about nine hundred and ninety-six feet to a monument at the boundary summit of Clover hill; thence northerly about forty-two hundred and eighty-four feet to a monument marking the thirty-third mile point; thence northerly about twenty-five hundred and fifty-five feet to a monument on the south side of Goodrich Hollow road; thence northerly about twenty-seven hundred and twenty-five feet to a monument marking the thirty-fourth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the thirty-fifth mile point; thence northerly about twenty-six hundred and eighty-nine feet to a monument on the north side of the Hancock-Stephentown road; thence northerly about twenty-five hundred and ninety-one feet to a monument marking the thirty-sixth mile point; thence northerly about fifty-two hundred and eighty feet to

a monument marking the thirty-seventh mile point; thence northerly about two thousand and sixty-five feet to a monument at the boundary summit of Rounds mountain; thence northerly about thirty-two hundred and fifteen feet to a monument marking the thirty-eighth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the thirty-ninth mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the fortieth mile point; thence northerly about forty-nine hundred and seventy-four feet to a monument marking the boundary summit of Mount Misery; thence northerly about three hundred and six feet to a monument marking the forty-first mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the forty-second mile point; thence northerly about nine hundred and seventy-two feet to a monument at the corner of Berlin, Hancock and Williamstown; thence northerly about two thousand and eleven feet to a monument on the north side of the Sweet road; thence northerly about twenty-two hundred and ninety-seven feet to a monument marking the forty-third mile point; thence northerly about fifty-two hundred and eighty feet to a monument marking the forty-fourth mile point, on the north slope of Rhodes Pinnacle; thence northerly about two thousand and fifty-six feet to a monument on the south side of Mills Hollow road; thence northerly about thirty-two hundred and twenty-four feet to a monument marking the forty-fifth mile point; thence northerly about forty-six hundred and two feet to a monument on the north side of the Beebe Hollow road; thence northerly about six hundred and seventy-eight feet to a monument marking the forty-sixth mile point; thence northerly about twenty-one hundred and seventy feet to a monument at the boundary summit of Berlin mountain; thence northerly about thirty-one hundred and ten feet to a monument marking the forty-seventh mile point; thence northerly about sixteen hundred and thirty-five feet to a monument on the north side of the Berlin-Williamstown road; thence northerly about thirty-six hundred and forty-five feet to a monument marking the forty-eighth mile point; thence northerly about thirty-four hundred and sixty-three feet to a monument on the south side of the South Williamstown-Petersburg road; thence northerly about three hundred and seven feet to a monument on the north side of the Williamstown-Petersburg road; thence northerly about fifteen hundred and ten feet to a monument marking the forty-ninth mile point; thence northerly about thirty-one hundred and twenty-seven feet to a monument at the boundary summit of Jim Smith hill; thence northerly about twenty-one hundred and fifty-three feet to a monument marking the fiftieth mile point; thence northerly about fifteen hundred and nineteen feet to bound one hundred and twelve, at the northwest corner of Massachusetts, previously described; thereby including within the state of New York that portion of the former territory of Massachusetts known as the district of Boston Corner, situate formerly in the southwesterly corner of Mas-

sachusetts, and westerly of the southwest line of the town of Mount Washington, in the county of Berkshire, and ceded to the state of New York upon certain conditions by an act of the legislature of Massachusetts passed on May fourteen, eighteen hundred and fifty-three, entitled "An act relating to the separation of the district of Boston Corner from this commonwealth, and the cession of the same to the state of New York." The acceptance by this state of sovereignty and jurisdiction of such ceded territory which took effect January three, eighteen hundred and fifty-five, the date of the approval of the act of congress consenting to such cession, is continued in force, subject to the retention by the state of Massachusetts of jurisdiction in any cause which arose or was pending before the date of the issuing of the proclamation provided in the third section of such act of the legislature of Massachusetts, provided, however, that nothing herein contained shall be construed to affect existing titles to property corporeal or incorporeal held under grants heretofore made by either of said states, nor to affect existing rights which said states, or either of them, or which the citizens of either of said states may have, by grant, letters patent or prescription irrespective of the boundary line hereby established, it not being the purpose hereof to define, limit or interfere with any such right, rights or privileges whatever the same may be. (*Amended by L. 1910, ch. 447.*)

L. 1910, ch. 447, § 2.—The governor is authorized and requested to transmit a copy of this act to the governor of the commonwealth of Massachusetts, and upon receiving acknowledgment of its receipt by the commonwealth of Massachusetts, the governor of this state shall cause such acknowledgment to be filed in the office of the secretary of state

§ 3.—The governor of this state is authorized in concurrence with the governor of the commonwealth of Massachusetts, to communicate to Congress the action of the two states on this subject and to request the approval of Congress of the boundaries thus established and monumented.

Source.—Former State L. (L. 1892, ch. 678) § 3; originally revised from R. S., pt. 1, ch. 1, tit. 1; L. 1853, ch. 586.

§ 4. **Vermont boundary line.**—The boundary line between the state of New York and the state of Vermont shall be and hereby is fixed as follows: Beginning at a stone bound standing on the easterly slope of a hill, in latitude forty-two degrees forty-four minutes forty-five and two hundred one thousandths seconds north, longitude seventy-three degrees fifteen minutes fifty-four and nine hundred four thousandths seconds west from Greenwich, a point in the southerly line of the state of Vermont; thence the line runs on a bearing north eighty-eight degrees thirty-three minutes twenty seconds west, three thousand two hundred five and seven-tenths feet to monument number two, standing at the southwest corner of the state of Vermont; thence north eleven degrees fifty-nine seconds west, twenty-one thousand eight hundred sixty-eight and eight-tenths feet, to monument number six on the northwest slope of a mountain and one hundred ninety feet northwest to a small brook which runs into the Hoosic river about four hundred

feet up stream from the lower covered bridge at North Pownal; thence north twenty-nine degrees one minute thirty-three seconds east, two thousand six hundred forty feet, to monument number seven which is a large block of granite set in the bed of the brook above mentioned and at the point where it enters Hoosic river; thence north seven degrees eighteen minutes seventeen seconds west, three hundred ninety-six feet along the west bank of Hoosic river to monument number eight on the north side of the highway leading from North Pownal to North Petersburg and near the northwest corner of the covered bridge before mentioned; thence north twenty-one degrees twenty-one minutes forty-three seconds east, two thousand fifteen and five-tenths feet across Hoosic river to monument number nine, on southwest side of the west bound track of the Boston and Maine railroad, and is between said track and Hoosic river opposite a ledge of rock; thence north thirty degrees forty minutes seven seconds west, one thousand one hundred fifty-six and two-tenths feet along the northeast bank of Hoosic river to monument number ten between said river and the west bound track of the Boston and Maine railroad; thence north fourteen degrees forty minutes west, one thousand one hundred seventy-three and seven-tenths feet across said track and highway leading from North Pownal to Petersburg Junction to monument number twelve, on brow of a hill just north of said highway and at the corner of two stone walls; thence north five degrees nineteen minutes fifty-seven seconds east, five thousand eighty-two feet to monument number thirteen, on the north side of a highway known as the Skipperee road and about four hundred twenty feet southeast of house on lands owned by Edgar Green; thence north forty degrees twenty minutes east, three hundred ninety-six feet to monument number fourteen, at edge of woods on the southwest slope of the hill north of the Skipperee road; thence south seventy-one degrees thirty-nine minutes fifty-five seconds east, one thousand six hundred twenty-six and two-tenths feet to monument number fifteen, in woods and on the slope of hill north of Skipperee road; thence north three degrees twenty minutes eighteen seconds east, one thousand four hundred eighty-two and three-tenths feet to monument number sixteen, at the corner of the towns of Pownal and Bennington; thence north one degree thirty-three minutes five seconds east, thirty-five thousand three hundred thirty-five and seven-tenths feet to monument number twenty-seven, at the corner of the towns of Bennington and Shaftsbury; thence north two degrees seven minutes twenty-five seconds east, thirty-five thousand one hundred sixty-five and six-tenths feet to monument number forty at the corner of the towns of Shaftsbury and Arlington; thence north two degrees forty-five minutes seventeen seconds east, thirty-three thousand nine hundred sixty-one feet to monument number fifty-two, at the corner of the towns of Arlington and Sandgate; thence north one degree twenty-seven minutes three seconds east, eleven thousand one hundred fifty-four and four-tenths feet to monument number fifty-five, on the north side of Camden Valley road

and about one-quarter mile west of R. C. Smith's house; thence north two degrees forty-two minutes nine seconds east, sixteen thousand eight hundred sixty-eight and eight-tenths feet to monument number sixty, on the north side of Beattie Hollow road; thence north one degree fifty-one minutes nine seconds east, two thousand seven hundred eighty-five and three-tenths feet to monument number sixty-one on the north side of Perkins Hollow road; thence north one degree fifty minutes forty seconds east, three thousand three hundred eighty and nine-tenths feet to monument number sixty-two, at corner of the towns of Sandgate and Rupert; thence north one degree forty-six minutes twenty-four seconds east, three thousand nine hundred eighty-six and seven-tenths feet to monument number sixty-three on the south side of the Salem-Rupert road; thence north one degree forty minutes thirty-three seconds east, six hundred forty-one and five-tenths feet to monument number sixty-four, on the south side of right of way of Delaware and Hudson railroad; thence north one degree thirty-eight minutes nine seconds east, three thousand four hundred sixty-four and two-tenths feet to monument number sixty-five, at the top of long open slope on north side of and overlooking the valley at West Rupert; thence north three degrees twenty-three minutes thirty-four seconds east, three thousand six hundred sixty-one and seven-tenths feet to monument number sixty-seven, at a point about midway between two highways and about one and one-third miles north of Delaware and Hudson railroad; thence north three degrees thirty-one minutes fifty-five seconds east, three thousand three hundred twenty-six and two-tenths feet to monument number sixty-nine, on sloping ground between two brooks; thence north one degree twenty-three minutes thirty-one seconds east, twenty thousand four hundred fifty-six and two-tenths feet to monument number seventy-six, at the corner of the counties of Bennington and Rutland; thence north one degree thirty-two minutes three seconds east, fourteen thousand twenty-five and five-tenths feet to monument number eighty, in West Pawlet on north side of highway leading southwest out of said village and about three hundred fifty feet from the Delaware and Hudson railroad crossing in West Pawlet; thence north one degree forty-nine minutes fourteen seconds east, twenty thousand three hundred eighty-one and nine-tenths feet to monument number ninety, at the corner of the towns of Pawlet and Wells; thence north one degree thirty-five minutes twenty-nine seconds east, nineteen thousand three hundred seventy-two and nine-tenths feet to monument number ninety-six, at the corner of the towns of Wells and Poultney; thence north one degree twenty-eight minutes fifty-nine seconds east, nineteen thousand two hundred forty-five and two-tenths feet to monument number one hundred one, on the south bank of Poultney river; thence about fifty-five feet along the previous course continued in the middle of the deepest channel of said river; thence along the middle of the deepest channel of said river to East bay; thence along the middle of the deepest channel of East bay and

the waters thereof to where the same communicates with Lake Champlain; thence along the middle of the deepest channel of Lake Champlain to the eastward of the islands called the Four Brothers and westward of the islands called Grand isle and Long isle or the Two Heroes, and to the westward of the Isle La Mott, to the parallel of the forty-fifth degree north latitude, as run by Valentine and Collins, seventeen hundred and seventy-one to seventeen hundred and seventy-four; according to report dated October seventh, seventeen hundred and ninety-one, of commissioners appointed by chapter eighteen of the laws passed at the thirteenth session of the legislature of this state in seventeen hundred and ninety; thereby including within the state of New York, all that portion of the former town of Fair Haven, formerly in the county of Rutland and state of Vermont, lying westerly from the middle of the deepest channel of Poultney river as it now runs, and between the middle of the deepest channel of such river and the west line of the state of Vermont, as established on March nineteen, eighteen hundred and seventy-nine, as the same is described in an act of the legislature of Vermont entitled "An act annexing that portion of the town of Fair Haven, lying west of Poultney river, to the state of New York," and approved by the governor of Vermont, November twenty-seven, eighteen hundred and seventy-six. The acceptance by this state of sovereignty and jurisdiction of such ceded territory which took effect April seventh, eighteen hundred and eighty, the date of the approval of the act of congress consenting to such cession, is continued in force. Nothing in this section contained shall be deemed to affect the determination of the boundary line between the state of New York and the commonwealth of Massachusetts.

Source.—Former State L. (L. 1892, ch. 678) § 4, as amended by L. 1907, ch. 339; L. 1907, ch. 339, § 2, incorporated; originally revised from R. S., pt. 1, ch. 1, tit. 1, § 1; L. 1879, ch. 93.

Lake Champlain.—Boundary line between states of Vermont and New York is through deepest channel of Lake Champlain. *People v. Gillette* (1890), 33 St. Rep. 352, 11 N. Y. Supp. 461.

§ 5. Canada boundary line.—The boundary line between the state of New York and Canada is as follows:

Commencing at the intersection of the parallel of the forty-fifth degree of north latitude with the middle of the deepest channel of the Richelieu river and running thence westerly along said parallel of forty-five degrees north latitude as originally run by Valentine and Collins, 1771-1774, to a point on the south shore of the St. Lawrence river (but shown by the United States survey of boundary line in 1845, under treaty of Washington, 1842, on sheet maps XXVI to XXX to vary from true parallel of forty-five degrees, as follows: monument 645, on bank of Richelieu river, is .822 miles north of parallel of 45° and .02 miles west from river; thence westerly 14.68 miles to monument 673, at .336 miles north; thence westerly 6.56 miles to monument 685, at .353 miles north; thence westerly

9.20 miles to monument 703, at .004 miles south; thence westerly 7.43 miles to monument 717, at .429 miles south; thence westerly 10.02 miles to monument 737, at .475 miles south; thence westerly 6.34 miles to monument 749, at .140 miles south; thence westerly 5.88 miles to monument 762, on true parallel of 45° ; thence westerly 4.20 miles to monument 774, at .030 miles north on bank of St. Lawrence river S. $74^{\circ} 45'$ W. 1840 yards distant from the stone church in the Indian village of St. Regis, this line being recognized as the boundary line by article one of said treaty of Washington). Thence beginning at aforesaid point on the south shore of the Saint Lawrence river, marked by monument 774, under the treaty of Washington, 1842, and in 1817 by a stone monument erected by Andrew Ellicott (the location of which point is described above), and running north $35^{\circ} 45'$ west into the river, on a line at right angles with the southern shore, to a point 100 yards south of the opposite island, called Cornwall island; thence turning westerly and passing around the southern and western side of said island keeping 100 yards distant therefrom, and following the curvatures of its shores, to a point opposite to the northwest corner or angle of said island; thence to and along the middle of the main river until it approaches the eastern extremity of Barnhart's island; thence northerly along the channel which divides the last mentioned island from the Canada shore, keeping 100 yards distant from the island, until it approaches Sheik's island; thence along the middle of the strait which divides Barnhart's and Sheik's islands to the channel called the Long Sault, which separates the two last mentioned islands from the lower Long Sault island; thence westerly (crossing the center of the last mentioned channel) until it approaches within 100 yards of the north shore of the Lower Sault island; thence up the north branch of the river keeping to the north of and near the Lower Sault island, and also north of and near the Upper Sault, sometimes called Baxter's island, and south of the two small islands marked on the map A and B, to the western extremity of the Upper Sault or Baxter's island; thence passing between the two islands called the Cats, to the middle of the river above; thence along the middle of the river, keeping to the north of the small islands marked C and D, and north also of Chrystler's island, and of the small island next above it, marked E, until it approaches the northeast angle of Goose Neck island; thence along the passage which divides the last mentioned island from the Canada shore, keeping 100 yards from the island to the upper end of the same; thence south of and near the two small islands called the Nut islands; thence north of and near the island marked F, and also of the island called Dry or Smuggler's island; thence passing between the islands marked G and H to the north of the island called Isle au Rapid Platt; thence along the north side of the last mentioned island, keeping 100 yards from the shore, to the upper end thereof; thence along the middle of the river, keeping to the south of and near the islands called Coussin (or Tussin) and Presque isle; thence up the river, keeping north of and near the several

Gallop Isles numbered on the map, 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, and also of Tick, Tibbits, and Chimney islands, and south of and near the Gallop isles numbered 11, 12 and 13, and also of Duck, Drummond, and Sheep islands; thence along the middle of the river, passing north of island No. 14, south of 15 and 16, north of 17, south of 18, 19, 20, 21, 22, 23, 24, 25 and 28, and north of 26 and 27; thence along the middle of the river, north of Gull island and of the islands Nos. 29, 32, 33, 34, 35, Bluff island, and Nos. 39, 44 and 45, and to the south of Nos. 30, 31, 36, Grenadier island, and Nos. 27, 28, 40, 41, 42, 43, 46, 47 and 48 until it approaches the east end of Wells island, thence to the north of Wells island, and along the strait which divides it from Rowe's island, keeping to the north of the small islands Nos. 51, 52, 54, 58, 59 and 61, and to the south of the small islands numbered and marked 49, 50, 53, 55, 57, 60 and X, until it approaches the northeast point of Grindstone island; thence to the north of Grindstone island and keeping to the north also of the small islands Nos. 63, 65, 67, 68, 70, 72, 73, 74, 75, 76, 77 and 78, and to the south of Nos. 62, 64, 66, 69 and 71, until it approaches the southern point of Hickory island; thence passing to the south of Hickory island and of the two small islands lying near its southern extremity numbered 79 and 80; thence to the south of Grand or Long island, keeping near its southern shore, and passing to the north of Carlton island, until it arrives opposite to the southwestern point, of said Grand island, in Lake Ontario; thence, passing to the north of Grenadier, Fox, Stony, and the Gallop islands, in Lake Ontario, and to the south of and near the islands called the Ducks, to the middle of the said lake, thence westerly along the middle of said lake to a point opposite the mouth of the Niagara river, thence to and up the middle of the said river to the Great Falls; thence up the Falls through the point of the Horse Shoe, keeping to the west of Irish or Goat island, and of the group of small islands at its head, and following the bends of the river so as to enter the strait between Navy and Grand islands; thence along the middle of said strait to the head of Navy island; thence to the west and south of and near to Grand and Beaver islands, and to the west of Strawberry, Squaw, and Bird islands to Lake Erie; thence southerly and westerly along the middle of Lake Erie in a direction to enter the passage immediately south of Middle island, being one of the easternmost of the group of islands lying in the western part of said lake (according to the decision of the commissioners under the sixth article of the treaty of Ghent, 1814, done at Utica, state of New York, June 18, 1822) to intersection with meridian line of cession, drawn through the most westerly bent or inclination of Lake Ontario, under deed of cession to the United States, executed March 1, 1781, under chapter thirty-eight of the third session of the legislature of this state in 1780, which meridian line was surveyed and marked with monuments by Andrew Ellicott in 1790, as duly appointed under resolution of Congress, August 19, 1789, and resurveyed in 1881 to 1885, and final report made December 1, 1885, by H. W.

Clarke, civil engineer and surveyor, on the part of the state of New York.

Source.—Former State L. (L. 1892, ch. 678) § 5; originally revised from R. S., pt. 1, ch. 1, tit. 1, § 1.

See *People v. Gillette* (1890), 33 St. Rep. 352, 11 N. Y. Supp. 461.

§ 6. **Pennsylvania boundary line.**—The boundary line between the states of New York and Pennsylvania is as follows:

Commencing at said intersection of said meridian line of cession, and running thence south to the shore of Lake Erie at initial monument set by A. Ellicott in 1790 as above; thence true south 440 feet to a large monument of Quincy granite, set in 1869, in latitude $42^{\circ} 16' 5.39''$, and longitude $79^{\circ} 45' 45.26''$, as deduced by the United States lake survey, marked 1869, latitude $42^{\circ} 15' 57.0''$, longitude $79^{\circ} 45' 54.4''$, by commissioners duly authorized on the part of the states of New York and Pennsylvania as stated in reports of regents boundary commission in 1886; thence south on said meridian line 13.895 miles to Fourteen Mile point; thence south 4.647 miles at an angle of $4'$ west to a large terminal monument; thence on the same line 100 feet to the southwest corner of New York marked by monument (in latitude $42^{\circ} 0' 1.42''$, as determined by state survey) set in 1787 by A. Hardenburgh and W. W. Morris, commissioners on the part of New York, and A. Ellicott and A. Porter, commissioners on the part of Pennsylvania; thence due east on parallel of latitude of 42° , as surveyed and marked by monuments by said commission, to the ninetieth milestone erected in 1786 by James Clinton and Simeon De Witt, commissioners on the part of New York, and Andrew Ellicott, commissioner on the part of Pennsylvania, on the west side of the south branch of the Tioga river in latitude $42^{\circ} 0' 1.13''$ as deduced by the state surveyor in 1879; thence due east on line established and marked by the last mentioned commission to a point in the center of Delaware river, such line passing through a monument set in the year 1884 by H. W. Clarke, surveyor, on the part of the state of New York, and C. M. Gere, surveyor, on the part of the state of Pennsylvania, and located six hundred feet west of the center of said river (all of the above line passing through monuments placed between the years 1881 and 1885 by said H. W. Clarke and C. M. Gere, of which a schedule is given in their report to the commission appointed by virtue of the provisions of chapter three hundred and forty of the laws of eighteen hundred and eighty, and dated December 1, 1885, showing angular deflections at each mile stone, with distances between each, summarized as follows: Southwest state corner to Chautauqua county corner 36.090 miles; to Cattaraugus county corner 38.743 miles; to Allegheny county corner 21.769 miles; to Steuben county corner (mile post eighty-two) 40.411 miles; to Tioga county corner, on the left bank of the Chemung river, 21.066 miles; to Broome county corner 23.387 miles; to the center of the Delaware river 38.396 miles; thence down the center of the Delaware river about eighty-five miles to its junction with the Neversink river; each of the states of New York and Penn-

sylvania having concurrent jurisdiction within and upon the waters of that portion of the main channel of the Delaware river between the lines of low water at either bank thereof; then S. 51° E. on the prolongation of boundary line between New York and New Jersey, to "tri-state monument," set in 1882 by joint commission, over bolt in bare lime-stone rock near the confluence of the Neversink and Delaware rivers as settled in 1769 by commission appointed by king of Great Britain, and marked by a crow foot cut into its upper face, in latitude 41° 21' 22.63", and longitude 74° 41' 40.70" west as determined by the United States coast survey in 1874. The said metes and bounds are in accordance with and subject to the agreement between commissioners of the states of New York and Pennsylvania, which took effect August 19, 1890, the date of the approval of the act of congress consenting thereto. The ratification and confirmation by this state of such agreement is continued in force. The following is a copy of such agreement:

"An agreement made the twenty-sixth day of March, in the year eighteen hundred and eighty-six, between Henry R. Pierson, Elias W. Leavenworth and Chauncey M. Depew, commissioners on the part of the state of New York, and Christopher M. Gere and Robert N. Torrey, commissioners on the part of the state of Pennsylvania.

WHEREAS, By the first section of chapter four hundred and twenty-four of the laws of the state of New York, for the year eighteen hundred and seventy-five, the regents of the university of the state of New York were authorized and directed to resume the word of 'examination as to the true location of the monuments which mark the several boundaries of the state,' as authorized by the resolution of the senate of April nineteenth, eighteen hundred and sixty-seven, and in connection with the authorities of Pennsylvania, to replace any monuments which may have become dilapidated or been removed on the boundary line of that state; and,

WHEREAS, The said board of regents of the university did through a committee of said board, previously appointed for the purpose, under said senate resolution of eighteen hundred and sixty-seven, proceed to carry out the instructions contained in said chapter four hundred and twenty-four of the laws of eighteen hundred and seventy-five; and,

WHEREAS, By chapter three hundred and forty of the laws of the said state of New York for the year eighteen hundred and eighty the said regents of the university were further authorized and empowered to designate and appoint three of their number as commissioners to meet such commissioners as may have been or may be appointed on the part of the state of Pennsylvania, and with such last-named commissioners as soon as may be, to proceed to ascertain and agree upon the location of the boundary line between said states, as originally established and marked with monuments, and in case any monuments are found dilapidated or removed from their original location, to replace them in a durable manner in their original position, and to erect such additional monuments at such

places on such lines as they may deem necessary for the proper designation of the boundary line between said states; and,

WHEREAS, The above-named Henry R. Pierson, Elias W. Leavenworth and Chauncey M. Depew were by resolution passed on the thirteenth day of July, eighteen hundred and eighty, duly designated and appointed by the said regents of the university of the state of New York as commissioners on the part of the state of New York for the purposes mentioned in said act; and,

WHEREAS, Also by an act of the legislature of the state of Pennsylvania, entitled 'An act in regard to the boundary monuments on the line between the state of Pennsylvania and New York, with an appropriation for expenses of the same,' passed May eighth, eighteen hundred and seventy-six, the governor of the state of Pennsylvania was authorized and empowered 'to appoint three persons to be a commission to act in conjunction with a similar commission of the state of New York, to examine as to the true location of the monuments which mark the boundary line between this state and the state of New York, and in connection with said commission of the state of New York, to replace any monuments which may have been dilapidated or been removed on the boundary lines of said states'; and,

WHEREAS, The governor of the state of Pennsylvania, under authority of said act, did duly designate and appoint James Worrall, Christopher M. Gere and Robert N. Torry, to be a commission for the purposes of said act; and,

WHEREAS, James Worrall, the first-named member of said commission, died during the progress of the work on said boundary line; to wit, on April first, eighteen hundred and eighty-five, and the surviving members, to wit: Christopher M. Gere and Robert N. Torry, have continued the work of said commission on the part of the state of Pennsylvania, as authorized by the aforesaid act.

Now, THEREFORE, the said commissioners for and on behalf of their respective states, having duly performed the duties imposed upon them by the said acts, and having examined said boundary line, and replaced in a durable manner the monuments to mark the same in pursuance of the authority duly given as aforesaid, have agreed and do hereby agree as follows:

First. The channel of the Delaware river, from a line drawn across said channel, from a granite monument erected upon the eastern bank of said river in the year eighteen hundred and eighty-two, by the joint boundary commission of the states of New Jersey and New York to mark the western extremity of the boundary line between said states of New Jersey and New York, in a westerly prolongation of said boundary line up and along said channel of said Delaware river as it winds and turns, for a distance of eighty-five miles or thereabouts, to a line drawn east across said river from a granite monument erected upon the west bank of said river in

the year eighteen hundred and eighty-four, by H. W. Clarke and C. M. Gere, to mark the eastern extremity of the first line hereinafter described, shall continue to be a part of the boundary or partition line between the said two states; provided, however, that the limit of territory between the said two states shall be the center of the said main channel, and provided further, that each state shall enjoy and exercise a concurrent jurisdiction within and upon the water of said main channel between the lines of low water at either bank thereof, between the limits hereinbefore mentioned.

Second. The line extending from the Delaware river aforesaid, at a point upon said river fixed and marked with monuments (which have since disappeared), by David Rittenhouse and Samuel Holland, in the month of November, in the year seventeen hundred and seventy-four, west, as the same was surveyed and marked with monuments in the year seventeen hundred and eighty-six, as far as the ninetieth milestone, by James Clinton and Simeon De Witt, commissioners on the part of the state of New York, duly appointed for that purpose by the governor of said state, in pursuance of an act of the legislature of said state, entitled 'An act for running out and marking the jurisdiction line between this state and the commonwealth of Pennsylvania,' passed seventh March, seventeen hundred and eighty-five, and David Rittenhouse, Andrew Porter and Andrew Ellicott, commissioners on the part of the commonwealth of Pennsylvania, duly appointed for that purpose by the supreme executive council of said commonwealth in pursuance of an act of the general assembly of said commonwealth, entitled, 'An act to authorize and enable the supreme executive council to appoint commissioners to join with the commissioners appointed, or to be appointed, on the part of the state of New York, to ascertain the northern boundary of this state from the river Delaware westward to the northwest corner of Pennsylvania,' passed thirty-first March, seventeen hundred and eighty-five, and from the said ninetieth milestone west, as the same was surveyed and marked with monuments and posts in seventeen hundred and eighty-seven by Abraham Hardenbergh and William W. Morris, commissioners on the part of the said state of New York, duly appointed in the place of Simeon De Witt and James Clinton aforesaid, by the governor of said state in pursuance of the act aforesaid, and the act supplementary thereto, passed by the legislature of said state, twenty-first April, seventeen hundred and eighty-seven, and Andrew Ellicott and Andrew Porter aforesaid, commissioners on the part of the commonwealth of Pennsylvania, to the point where said line is intersected by the line of cession or meridian boundary hereinafter described, which said line so surveyed and marked in the years seventeen hundred and eighty-six and seventeen hundred and eighty-seven has since been acknowledged and recognized by the said two states as a part of the limit of their respective territory and jurisdiction, shall notwithstanding any want of conformity to the verbal description as written in the charter of the province of Pennsylvania, granted to William

Penn in the year sixteen hundred and eighty-two, or as recited by the commissioners aforesaid, continue to be the boundary or partition line between the two said states, from the Delaware river aforesaid, to the said point of intersection with the said line of cession; provided that wherever upon said line the locations of any of the monuments, or posts, erected by the said commissioners in seventeen hundred and eighty-six and seventeen hundred and eighty-seven have been lost and cannot otherwise be definitely fixed, then and in that case, and in every case where it is required to establish intervening points in said line, a straight line drawn between the nearest adjacent monuments whose localities are ascertained shall be understood to be, and shall be, the true boundary line.

Third. The line of cession, described as a meridian line, drawn from the forty-fifth degree of north latitude, south through the most westerly bent or inclination of Lake Ontario, in the deed of cession to the United States of certain territory claimed by the state of New York, lying west of said line, executed first March, seventeen hundred and eighty-one, by James Duane, William Floyd and Alexander McDougal, delegates in congress of said United States from the said state of New York, in pursuance of an act of the legislature of said state, entitled 'An act to facilitate the completion of the articles of confederation and perpetual union among the United States of America,' passed February nineteenth, seventeen hundred and eighty, which said territory was afterward conveyed by the United States aforesaid to, and became a part of the territory and jurisdiction of the said commonwealth of Pennsylvania, as the said line was surveyed and marked with posts and monuments of stone in the year seventeen hundred and ninety, by Andrew Ellicott, who was duly appointed for that purpose by the president of the United States, in pursuance of a resolution of congress, passed nineteenth August, seventeen hundred and eighty-nine, which said line, and its prolongation due north into the waters of Lake Erie until it intersects the northern boundary of the United States aforesaid, have since been acknowledged and recognized by the said two states, as a part of the limit of their respective territory and jurisdiction shall, notwithstanding any possible want of conformity to the verbal description thereof, as contained in said deed of cession, continue to be the boundary or partition line between the two said states, so far as said line so surveyed and marked in seventeen hundred and ninety shall extend.

Fourth. The monumental marks by which the said boundary line, except such portions thereof as may be within the waters of the Delaware river, and Lake Erie, shall hereafter be known and recognized, are hereby declared to be—

I. The original monuments of stone, erected in the years seventeen hundred and eighty-six and seventeen hundred and eighty-seven by the commissioners aforesaid, and in the year seventeen hundred and ninety by Andrew Ellicott aforesaid, as the same have been restored and re-

established in their original positions, or have been replaced by granite monuments erected in the years eighteen hundred and eighty-one, eighteen hundred and eighty-two, eighteen hundred and eighty-three, eighteen hundred and eighty-four and eighteen hundred and eighty-five, by H. Wadsworth Clarke, surveyor on the part of New York, and Christopher M. Gere, surveyor on the part of Pennsylvania, duly appointed by the parties hereto.

II. The new monuments of granite, erected in the years eighteen hundred and eighty-one to eighteen hundred and eighty-five, inclusive, by the aforesaid surveyors, at intervals of one mile, more or less, and numbered consecutively, along said line originally surveyed and marked in the years seventeen hundred and eighty-six and seventeen hundred and eighty-seven, beginning from the Delaware river, and severally marked on the north side with the letters 'N. Y.,' and on the other side with the letters 'PA.' and along said line originally surveyed and marked in the year seventeen hundred and ninety, beginning at the shore of Lake Erie, and severally marked on the east side with the letters 'N. Y.,' and on the west side with the letters 'PA.'

III. The new monuments of granite erected by the said surveyors, in the years eighteen hundred and eighty-one to eighteen hundred and eighty-five, inclusive, aforesaid at intervening points on said line, and at its intersection with public roads, railroads and rivers, and at other points, and severally marked on the one side with the letters 'N. Y.,' and on the other side with the letters 'PA.'

IV. A large monument of granite, erected in the year eighteen hundred and eighty-four by the said surveyors six hundred feet west of the center of the Delaware river in the said line originally fixed in the year seventeen hundred and eighty-six, to mark its eastern terminus; a large monument of granite erected in the year eighteen hundred and eighty-four by the said surveyors in the said line or meridian boundary, as originally fixed in the year seventeen hundred and ninety, one hundred feet north from its intersection with the line originally surveyed as aforesaid, in the year seventeen hundred and eighty-seven, which said point of intersection is marked by a small monument of granite buried in the center of the highway, in eighteen hundred and eighty-four by the said surveyors; and also a large monument of granite erected in the year eighteen hundred and sixty-nine by John V. L. Pruyn, George R. Perkins, Samuel B. Woolworth, and George W. Patterson on the part of the state of New York, and William Evans on the part of the state of Pennsylvania, four hundred and forty feet south of the original monuments erected in the year seventeen hundred and ninety, by Andrew Ellicott aforesaid, upon the south shore of Lake Erie, in the line originally surveyed and marked by him as aforesaid.

Fifth. The field book of said surveyors containing the notes of the re-surveys along said line in the years eighteen hundred and seventy-seven,

eighteen hundred and seventy-eight and eighteen hundred and seventy-nine; also the 'record of monuments' prepared by said surveyors, containing the descriptions of the locations of the several monuments erected by them, and of the witness marks thereto; also the maps of said line, and the vicinity thereof, showing the locations of said monuments; and also the 'diary of operations' of said surveyors under the direction of the parties hereto; the same having been duly authenticated by the signature of the said surveyors, and the several documents and books of record containing the transactions of the parties hereto; all of which being placed on file in the office of the secretary of state of New York, and the office of the secretary of internal affairs of Pennsylvania, shall constitute the permanent and authentic records of said boundary line, and are hereby adopted by the parties hereto, and made a part of this agreement.

Sixth. This agreement shall become binding upon the two states when ratified by the legislatures thereof, respectively, and when confirmed by the congress of the United States.

In witness whereof the said commissioners have hereunto set their hands and seals in duplicate, the twenty-sixth day of March, eighteen hundred and eighty-six, aforesaid.

Executed in the presence of witnesses:

As to Henry R. Pierson: Edward I. Devlin,—H. R. Pierson, L. S.

As to E. W. Leavenworth: H. W. Clarke,—E. W. Leavenworth,
L. S.

As to Chauncey M. Depew: Edward I. Devlin,—Chauncey M. Depew,
L. S.

As to C. M. Gere: A. D. Birchard,—C. M. Gere, L. S.

As to Robert N. Torrey: Andrew Thompson,—Robert N. Torrey,
L. S."

Source.—Former State L. (L. 1892, ch. 678) § 6; originally revised from R. S., pt. 1, ch. 2, tit. 1, § 1; L. 1886, ch. 560.

§ 7. **New Jersey boundary line.**—The boundary line between the states of New York and New Jersey is as follows:

Commencing at the said "tri-state monument," and running thence along the line laid out by a joint commission from the states of New York and New Jersey in 1774, and which was more definitely marked with monuments by another joint commission in 1882, under chapter 340 of the laws of 1880, on an average course S. 51° E., with slight deflections as to the same as marked by mile monuments, a distance of 48.20 miles to the station rock on the west bank of the Hudson river, said station rock being in latitude 40° 59' 48.17" north and longitude 73° 54' 11" west, as determined by the United States coast survey, and marked as the original terminal monument of the line as established in 1774, according to the report of the commissioners on the boundary between the state of New York and the state of New Jersey, dated March 24, 1884; thence easterly

to a point in the Hudson river in latitude $40^{\circ} 59' 49.75''$ north and longitude $73^{\circ} 53' 38.57''$ west; thence southerly along the middle of said river and of the bay of New York to a point opposite the northeast angle of Staten Island; thence westerly along the center of the Kill von Kull to a point opposite the northwest angle of Staten Island; thence southerly along the center of the Arthur kill or Staten Island sound to a point at the entrance of Raritan bay, such point being in latitude $40^{\circ} 29' 55.57''$ north, and longitude $74^{\circ} 15' 33.31''$ west, as the same is shown on maps and agreement filed by a joint commission of the two states in the office of the secretary of state, and dated December 23, 1889; thence easterly through the center of Raritan bay to a point between Sandy Hook and Coney Island as the same is known on a map filed with the secretary of state, and dated October 12, 1877, thence easterly to the main sea.

Such metes and bounds are as reported October 12, 1887, and December 23, 1889, by commissioners to mark out and locate the boundary line in land under water, between the states of New York and New Jersey, and are in accordance with and subject to the two agreements between commissioners of such states, made, respectively, September 16, 1833, and June 7, 1883, and which took effect, respectively, February 5, 1834, and May 23, 1884, the dates of the approvals of the acts of congress consenting thereto. The ratification and confirmation by this state of such agreements are continued in force. The following are copies of such agreements, respectively:

“Agreement made between the commissioners on the part of the state of New York, and the commissioners on the part of the state of New Jersey relative to the boundary line between the two states.

Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners duly appointed on the part and behalf of the state of New York, in pursuance of an act of the legislature of the said state, entitled “An act concerning the territorial limits and jurisdiction of the state of New York and the state of New Jersey,” passed January 18, 1833, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the state of New Jersey, in pursuance of an act of the legislature of the said state, entitled “An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York,” passed February 6, 1833, of the other part.

Article First.—The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the waters between Staten Island and New Jersey, and of Raritan bay, to the main sea, except as hereinafter otherwise particularly mentioned.

Article Second.—The state of New York shall retain its present jurisdic-

tion of and over Bedlow's and Ellis' islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that state.

Article Third.—The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the waters of Hudson river lying west of Manhattan island and to the south of the mouth of Spuytenduyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof; subject to the following rights of property and of jurisdiction of the state of New Jersey, that is to say:

1. The state of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York and west of the middle of that part of the Hudson river which lies between Manhattan island and New Jersey.

2. The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made, and to be made, on the shore of the said state, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the state of New York, which now exist or which may hereafter be passed.

3. The state of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters, provided that the navigation be not obstructed or hindered.

Article Fourth.—The state of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's island, in respect to such quarantine laws and laws relating to passengers as now exists, or may hereafter be passed under the authority of that state, and for executing the same; and the said state shall also have exclusive jurisdiction, for the like purposes, of and over the waters of the sound, from the westernmost end of Shooter's island to Woodbridge creek, as to all vessels bound to any port in the said state of New York.

Article Fifth.—The state of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan bay lying westward of a line drawn from the light-house at Princess' bay to the mouth of Mattavan creek, subject to the following rights of property and of jurisdiction of the state of New York:

1. The state of New York shall have the exclusive right of property in and to the land under water, lying between the middle of the said water and Staten Island.

2. The state of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made, on the shore of Staten Island; and of and over all vessels aground on said shore,

or fastened to any such wharf or dock, except that the said vessel shall be subject to the quarantine or health laws, and laws in relation to passengers of the state of New Jersey which now exist, or which may hereafter be passed.

3. The state of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters, provided that the navigation of the said waters be not obstructed or hindered.

Article Sixth.—Criminal process issued under the authority of the state of New Jersey, against any person accused of an offense committed within that state; or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid; or committed against the regulations made or to be made by that state, in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the state of New Jersey against any person domiciled in that state, or against property taken out of that state to evade the laws thereof; may be served upon any of the said waters within the exclusive jurisdiction of the state of New York, unless such person or property shall be on board a vessel aground upon, or fastened to the shore of the state of New York, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New York.

Article Seventh.—Criminal process issued under the authority of the state of New York, against any person accused of an offense committed within that state; or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid; or committed against the regulations made or to be made by that state, in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the state of New York against any person domiciled in that state, or against property taken out of that state to evade the laws thereof; may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon, or fastened to the shore of the state of New Jersey, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New Jersey.

Article Eighth.—This agreement shall become binding on the two states when confirmed by the legislatures thereof respectively, and when approved by the congress of the United States.

Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state), at the city of New York, this sixteenth day of September, in the year of our Lord one thousand eight

hundred and thirty-three, and of the independence of the United States, the fifty-eighth.

(Signed,) B. F. BUTLER,
PETER AUGUSTUS JAY,
HENRY SEYMOUR,
THEO. FRELINGHUYSEN,
JAMES PARKER,
LUCIUS Q. C. ELMER."

"An agreement made the seventh day of June, in the year eighteen hundred and eighty-three, between Henry R. Pierson, Elias W. Leavenworth and Chauncey M. Depew, commissioners on the part of the state of New York, and Abraham Browning, Thomas N. McCarter and George H. Cook, commissioners on the part of the state of New Jersey.

WHEREAS, By the first section of chapter three hundred and forty of the laws of the state of New York for the year eighteen hundred and eighty, it was recited, among other things, that whereas, by an act of the legislature passed the twenty-sixth day of May, eighteen hundred and seventy-five, the regents of the university of the state of New York were authorized and directed, in connection with the authorities of Pennsylvania and New Jersey, respectively, to replace any monuments which have become dilapidated or been removed on the boundary lines of those states and it was thereby declared that the lines originally laid down and marked with monuments by the several joint commissioners, duly appointed for that purpose, and which have since been acknowledged and legally recognized by the several states interested, as the limits of their territory and jurisdiction, are the boundary lines of said states irrespective of want of conformity to the verbal descriptions thereof; and by the second section of the same chapter of the laws of the state of New York, the said regents were authorized and empowered to designate and appoint three of their number as commissioners, to meet such commissioners as may have been, or may be, appointed on the part of the states of Pennsylvania and New Jersey, or either of them, and with such last-named commissioners, as soon as may be, to proceed to ascertain and agree upon the location of said lines as originally established and marked with monuments, and in case any monuments are found dilapidated or removed from their original location, said commissioners are authorized to replace them in a durable manner in their original positions, and to erect such additional monuments at such places on said lines as they may deem necessary for the proper designation of the boundary lines of said states; and

WHEREAS, Also the above-named Henry R. Pierson, Elias W. Leavenworth and Chauncey M. Depew have been duly designated and appointed by the said the regents of the university of the state of New York, commissioners on the part of said state for the purposes mentioned in said act; and

WHEREAS, Also by an act of the legislature of the state of New Jersey, entitled 'An act appointing commissioners to locate the northern boundary line between the states of New York and New Jersey and to replace and erect monuments thereon,' approved April thirteen, eighteen hundred and seventy-six, the governor of the state of New Jersey was authorized to appoint three commissioners with power, on the part of said state of New Jersey, to meet any authorities on the part of the state of New York, who may be duly authorized, and with them to negotiate and agree upon the true location of the said boundary line between the states of New York and New Jersey, and also to replace any monuments which may have become dilapidated, or been removed, on said boundary line, and to erect new ones, which agreement it was thereby enacted should be in writing and signed and sealed by the authorities of the state of New York and the commissioners of the state of New Jersey; and

WHEREAS, The above-named Abraham Browning, Thomas N. McCarter and George H. Cook have been duly appointed commissioners on the part of the state of New Jersey, under said act; and

WHEREAS, By a supplement to the last said act, approved on the twenty-fifth day of March, eighteen hundred and eighty-one, the commissioners under the last said act were, in addition to the authority conferred by the last said act, also authorized in their discretion to proceed to ascertain and agree upon the location of the northern boundary line between the states of New York and New Jersey, as originally established and marked with monuments, and in case any monuments are found dilapidated, or removed from their original location, said commissioners were authorized to renew and replace them in a durable manner in their original position, and to erect such additional monuments, at such places on said line, as they may deem necessary for the proper designation of the boundary line of said states; and

WHEREAS, The said commissioners, acting for and on behalf of their respective states, have entered upon the performance of the duties imposed upon them by the said acts, and have, in pursuance of the authority to them severally given as aforesaid, agreed, and hereby do agree, as follows:

First. The lines extending from the Hudson river on the east to the Delaware river on the west, as the same was laid down and marked with monuments in seventeen hundred and seventy-four, by William Wickham and Samuel Gale, commissioners on the part of the then colony of New York, duly appointed for that purpose in pursuance of an act of the assembly of the colony of New York, passed on the sixteenth day of February, seventeen hundred and seventy-one, entitled 'An act for establishing the boundary or partition line between the colonies of New York and Nova Cæsarea, or New Jersey, and for conferring titles and possession,' and John Stevens and Walter Rutherford, commissioners on the part of the then colony of New Jersey, duly appointed in pursuance of an act of the assembly of the colony of New Jersey, passed on the twenty-third

day of September, seventeen hundred and seventy-two, entitled 'An act for establishing the boundary or partition line between the colonies of New York and Nova Cæsarea, or New Jersey, and for conferring titles and possession,' which said line has since been acknowledged and recognized by the two states as the limit of their respective territory and jurisdiction, shall, notwithstanding its want of conformity to the verbal description thereof as recited by said commissioners, continue to be the boundary or partition line between the said two states; provided that wherever upon said line the location of one or more of the monuments, erected by said commissioners in seventeen hundred and seventy-four, has been lost and cannot be otherwise definitely fixed and determined, then, and in that case and in every case where it is required to establish intervening points on said line, a straight line drawn * between the nearest adjacent monuments whose localities are ascertained shall be the true boundary line.

Second. The monumental marks by which said boundary line shall hereafter be known and recognized are hereby declared to be, first, the original monuments of stone erected in seventeen hundred and seventy-four, along said line, by the commissioners aforesaid, as the same have been restored and re-established in their original positions by Edward A. Bowser, surveyor on the part of New Jersey, and Henry W. Clarke, surveyor on the part of New York, duly appointed by the parties hereto; second, the new monuments of granite erected by the aforesaid surveyors at intervals of one mile, more or less, along said line and numbered consecutively, beginning from the Hudson river, and severally marked on the northerly side with the letters N. Y., and on the southerly side with the letters N. J.; and third, the monuments of granite erected by the aforesaid surveyors at intervening points on said line at its intersection with public roads, railroads and rivers, and severally marked by them, on the northerly side with the letters N. Y., and on the southerly side with the letters N. J., and fourth, the terminal monuments erected at the western terminus of said line at the confluence of the Delaware and Navesink rivers, and the terminal monument erected on the brow of the rock called the Palisades, near the eastern terminus, and the rock lying and being at the foot of the Palisades on the bank of the Hudson river, and marked as the original terminal monument of said line established in seventeen hundred and seventy-four, as the same are described in a joint report made to the parties hereto by Elias W. Leavenworth, commissioner on the part of New York, and George H. Cook, commissioner on the part of New Jersey.

Third. The field books of said surveyors containing the descriptions of the locations of the several monuments erected by them and of the witness marks thereto, the report of said surveyors containing the account of their work in ascertaining and marking said line, together with the topographical map of said line and the vicinity thereof, and the several documents and

* So in original.

books of record containing the transactions of the parties aforesaid, having been duly authenticated and attested by the signatures of the said commissioners, and placed in file in the offices of the secretaries of state of the two states, shall constitute the permanent and authentic records of said boundary line, and are hereby adopted by the parties hereto, and made part of this agreement.

Fourth. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when confirmed by the congress of the United States.

In witness whereof, the said commissioners have hereto set their hands and seals, in duplicate, this seventh day of June, in the year of our Lord one thousand eight hundred and eighty-three.

HENRY R. PIERSON,
E. W. LEAVENWORTH,
CHAUNCEY M. DEPEW,
A. BROWNING,
THOMAS N. McCARTER,
GEO. H. COOK.

Executed in the presence of:

Witness as to Henry R. Pierson, A. C. Judson, Albany, N. Y.

As to Chauncey M. Depew, W. J. Van Arsdale.

As to commissioners of New Jersey, B. Williamson.

Witness to the signature of E. W. Leavenworth, A. F. Lewis."

Trenton, January 18, 1890.

An agreement, made the twelfth day of October in the year 1887, between Mayo W. Hazeltine, Robert Moore and Lieut. G. C. Hanus, U. S. N., commissioners on the part of the state of New York, and George H. Cook, Robert C. Bacot and A. B. Stoney, commissioners on the part of the state of New Jersey.

WHEREAS, By chapter 69, of the laws of the state of New York for the year 1887, the governor was authorized to appoint three commissioners on the part of the state of New York, with full power to meet with the commissioners duly authorized on the part of the state of New Jersey, and with them locate and mark out by proper monuments and buoys the true boundary line between the two states in lands under water in Raritan bay; and

WHEREAS, The said Mayo W. Hazeltine, Robert Moore and Lieut. G. C. Hanus, U. S. N., were duly appointed commissioners on the part of the state of New York for the purposes mentioned in the said act; and

WHEREAS, By an act of the legislature of the state of New Jersey, passed April 20, 1886, entitled a "Joint resolution authorizing the appointment of a commissioner to locate and mark out the boundary line between the state of New Jersey and the state of New York in Raritan bay," the governor of the state of New Jersey was authorized to appoint three commissioners, with power on the part of the state to meet any authorities

duly authorized on the part of the state of New York, and with them locate by proper buoys the boundary line between the two states of lands under water in Raritan bay; and

WHEREAS, The said George H. Cook, Robert C. Bacot and A. B. Stoney, were duly appointed commissioners for the purposes of said act; and

WHEREAS, The said commissioners, acting for and on behalf of their respective states, have entered upon the performance of the duties imposed upon them by said act, and have in pursuance of the authority to them severally given as aforesaid agreed and hereby do agree upon a boundary line between the two states in lands under water in Raritan bay, and locate the same as follows:

First. From the "Great Beds Lighthouse" in Raritan bay north $20^{\circ} 16'$ west, true, to a point in the middle of the waters of Arthur kill or Staten Island sound, equidistant between the southwesterly corner of the dwelling-house of David C. Butler, at Ward's Point, on Staten Island, in the state of New York, and the southeasterly corner of the brick building on the lands of Cortlandt L. Parker, at the intersection of the westerly line of Water street with the northerly line of Lewis street, in Perth Amboy, in the state of New Jersey.

Second. From "Great Beds Lighthouse" S. $64^{\circ} 21'$ E. true, in the line with the center Waackaack or Wilson's beacon, in Monmouth county, New Jersey, to a point at the intersection of the said line with a line connecting "Morgan No. 2" triangulation point U. S. coast and geodetic survey in Middlesex county, New Jersey, with the granite and iron beacon marked on the accompanying map as "Romer Stone Beacon," situated on the "Dry Romer Shoal"; and thence on a line bearing N. $77^{\circ} 9'$ E. true, connecting "Morgan No. 2" triangulation point U. S. coast and geodetic survey in Middlesex county, New Jersey, with said "Romer Stone Beacon" (the line passing through said beacon and continuing in the same direction) to a point at its intersection with a line drawn between the "Hook Beacon" on Sandy Hook, New Jersey, and the triangulation point of the U. S. geodetic survey known as the Oriental Hotel on Coney Island, New York; then southeasterly at right angles with the last mentioned line to the main sea.

Third. The monumental marks by which said boundary line shall be hereafter known and recognized are hereby declared to be as follows:

1. The "Great Beds Lighthouse."
2. A permanent monument marked "State Boundary Line, New York and New Jersey," and to be placed at the intersection of the line drawn from the "Great Beds Lighthouse," to "Waackaack or Wilson's Beacon," Monmouth county, New Jersey, and the line drawn from "Morgan No. 2" triangulation point U. S. coast and geodetic survey, in Middlesex county, New Jersey, to the "Romer Stone Beacon."
3. Eight buoys or spindles to be marked like the permanent monument

above mentioned, and placed at suitable intervening points along the line from the said permanent monument to the "Romer Stone Beacon."

4. The "Romer Stone Beacon."

Fourth. The maps accompanying and filed with this agreement, showing the location of the above described boundary line between the state of New York and the state of New Jersey in Raritan bay to the main sea, and of the monumental marks by which it is marked and to be marked, duly authenticated and attested by the signatures of the said commissioners, and placed on file in the offices of the secretaries of state of the respective states, shall constitute the permanent and authentic records of said boundary line, and are hereby adopted by the parties hereto, and made a part of this agreement.

In witness whereof, the said commissioners have hereto set their hands and seals in duplicate, this twelfth day of October, in the year of our Lord 1887.

M. W. HAZELTINE.	[L. S.]
GEO. H. COOK.	[L. S.]
ROBERT MOORE.	[L. S.]
ROB'T C. BACOT.	[L. S.]
G. C. HANUS, LIEUT. U. S. N.	[L. S.]
A. B. STONEY.	[L. S.]

Certified to

EDWARD P. DOYLE,

Secretary of Joint Commission.

An agreement made the twenty-third day of December, in the year eighteen hundred and eighty-nine, between Mayo W. Hazeltine, Robert Moore and Lieut. G. C. Hanus, U. S. N., commissioners on the part of the state of New York, and Robert C. Bacot, William M. Oliver and Edwin A. Stevens, commissioners on the part of the state of New Jersey.

WHEREAS, By chapter 69, laws of 1887, the governor of the state of New York was authorized to appoint three commissioners with full power on the part of the state of New York, to meet with the commissioners appointed, or to be appointed, for a like purpose on the part of the state of New Jersey, and with them to locate and mark out by proper monuments and buoys the true boundary line between the two states in lands under water in Raritan bay; and

WHEREAS, The jurisdiction of the said commissioners was continued and extended by chapter 159, laws of 1888, and chapter 212, laws of 1889, so as to include the Arthur kill, Kill von Kull, New York bay and the Hudson river; and

WHEREAS, The said Mayo W. Hazeltine, Robert Moore and Lieut. G. C. Hanus, U. S. N., were duly appointed commissioners on the part of the state of New York, for the purposes mentioned in said acts; and

WHEREAS, By an act of the legislature of the state of New Jersey, passed February 14, 1888, entitled, "A joint resolution authorizing the appointment of a commission to locate and mark out the boundary line between the state of New Jersey and the state of New York, in lands under water in the

Arthur kill, Kill von Kull, New York bay and the Hudson river''; and

WHEREAS, George H. Cook, Robert C. Bacot and William M. Oliver were duly appointed commissioners for the purpose of said act; and

WHEREAS, George H. Cook having died, Edwin A. Stevens was appointed in his stead, clothed with the same powers; and

WHEREAS, The said commissioners acting for and on behalf of their respective states, have entered upon the performance of the duties imposed upon them by the said acts of their respective legislatures, and have, in pursuance of the authority to them severally given as aforesaid, agreed and hereby do agree upon a boundary line between the two states in lands under water in the Arthur kill, Kill von Kull, New York bay and the Hudson river, and do locate the same as follows:

First. Starting from a point (at the conclusion of the boundary line in Raritan bay) and marked for the purposes of this agreement, A.

This point is equidistant between the southwesterly corner of the dwelling-house of David C. Butler, at Ward's Point, on Staten Island, in the state of New York, and the southeasterly corner of the brick building on the lands of Cortlandt L. Parker, at the intersection of the westerly line of Water street with the northerly line of Lewis street, in Perth Amboy, in the state of New Jersey.

The line runs thence in a succession of straight lines through the Arthur kill, the Kill von Kull, New York bay and the Hudson river, to a point marked "JJ," for the purposes of this agreement.

This point "JJ," is at the extreme northern limit of the boundary line in lands under water, and from this point the line runs westerly to a rock which is described in the report of the New York and New Jersey boundary commission in 1883 as marking the eastern end of the boundary line between New York and New Jersey, as determined upon by the royal boundary commission of 1769.

The absolute geographical locations of the point at the place of beginning and the point of conclusion are as follows:

POINT A (PLACE OF BEGINNING).

Latitude. Seconds in meters. Longitude. Seconds in meters. (Latitude and longitude not given. Description sufficient.)

POINT JJ (PLACE OF CONCLUSION).

LATITUDE.	Seconds in meters.	LONGITUDE.	Seconds in meters.
40° 59' 49"	74 N. 1534.38	74° 53' 38"	57 W. 901.46

The points at which changes of direction occur in the boundary line, from the place of beginning to the place of conclusion, are for the purposes of this agreement lettered or numbered, and their determination and absolute geographical positions are as follows:

LATITUDE.			LONGITUDE.			Seconds in meters.
Degrees.	Minutes.	Seconds.	Degrees.	Minutes.	Seconds.	
B 40	30	31 N.	74	15	30.74 W.	723.9
C 40	30	56 N.	74	15	16.22 W.	382.
D 40	31	15.07 N.	74	14	47.15 W.	1109.9
E 40	32	31.9 N.	74	15	02.5 W.	58.8
F 40	32	57.38 N.	74	14	52.42 W.	1233.9
G 40	33	32.68 N.	74	13	54.57 W.	1284.
H 40	33	25.03 N.	74	13	06.29 W.	148.
I 40	33	37.54 N.	74	12	53.95 W.	1269.4
J 40	34	25.03 N.	74	12	38. W.	893.7
K 40	35	16.12 N.	74	12	27.55 W.	647.9
L 40	35	51.87 N.	74	12	00. W.	0.
No. 1 40	36	01. N.	74	12	00. W.	0.
No. 2 40	36	21.45 N.	74	12	18.88 W.	443.9
No. 3 40	36	51.02 N.	74	12	15.48 W.	363.9
No. 4 40	37	00. N.	74	12	10.21 W.	240.
O 40	37	27.36 N.	74	12	15.61 W.	366.9
P 40	37	43.24 N.	74	12	09.69 W.	227.9
R 40	37	53.36 N.	74	12	10.12 W.	238.
S 40	38	04.86 N.	74	11	54.87 W.	1289.3
Position.			Center of Baltimore and Ohio Bridge Pier			
40	38	15.31 N.	74	11	47.97 W.	1125.9
A' 40	38	30.92 N.	74	11	30.03 W.	719.8

Position. Center of Baltimore and Ohio Bridge Pier—(Concluded).

LATITUDE.			Seconds in meters.	LONGITUDE.			Seconds in meters.
Degrees.	Minutes.	Seconds.		Degrees.	Minutes.	Seconds.	
B' 40	38	45.38 N.	1399.8	74	11	09.79 W.	229.9
C' 40	38	47.13 N.	1453.7	74	10	55.42 W.	1301.8
D' 40	38	30.79 N.	949.7	74	08	36.68 W.	861.9
E' 40	38	36.89 N.	1137.9	74	08	00. W.	0.0
F' 40	38	31.37 N.	967.6	74	07	35.15 W.	825.8
G' 40	38	52.66 N.	1624.3	74	06	36.94 W.	867.9
H' 40	38	52.66 N.	1624.3	74	05	37.88 W.	889.8
I' 40	39	05.05 N.	155.77	74	05	14.64 W.	343.09
J' 40	39	04.94 N.	152.38	74	03	22.25 W.	522.65
K' or							
AA 40	42	00. N.	0.0	74	01	36.50 W.	857.0
BB 40	43	04.68 N.	144.36	74	01	26.59 W.	624.07
CC 40	45	26.82 N.	827.30	74	00	52. W.	1219.66
DD 40	49	26.82 N.	1096.61	73	57	50.38 W.	1180.6
EE 40	51	03.62 N.	111.67	73	57	11.69 W.	273.78
FF 40	53	19.05 N.	587.64	73	55	48.77 W.	1141.7
GG 40	55	40.03 N.	1243.13	73	54	52.82 W.	1235.61
HH 40	56	48.22 N.	1487.48	73	54	33.35 W.	780.06
II 40	58	54.39 N.	1677.82	73	53	47.63 W.	1113.58
JJ 40	59	49.74 N.	1534.38	73	53	38.57 W.	901.46

Second. The monumental marks by which said boundary line shall hereafter be known and recognized have been carefully described, their absolute geographical positions given, and this description and location will be filed in the office of the secretary of state of New York and the secretary of state of New Jersey.

Third. The maps accompanying and filed with this agreement, showing the location of the above-mentioned boundary line between the state of New York and the state of New Jersey in lands under water in Arthur kill, Kill von Kull, New York bay and the Hudson river, and of the monumental marks by which such line may be distinguished and known, duly authenticated and attested by the signatures of the aforesaid commissioners, and placed on file in the offices of the secretaries of state of the respective states, shall constitute the permanent and authenticated record of said boundary line, and are hereby adopted by the parties hereto and made part of this agreement.

In witness whereof, the said commissioners have hereto set their hands and seals in duplicate, this twenty-third day of December, in the year of our Lord eighteen hundred and eighty-nine.

M. W. HAZELTINE. [L. S.]

ROBERT MOORE. [L. S.]

G. C. HANUS. [L. S.]

R. C. BACOT. [L. S.]

W. M. OLIVER. [L. S.]

E. A. STEVENS. [L. S.]

Attest:

EDWARD P. DOYLE,

Secretary Joint Boundary Commission.

Source.—Former State L. (L. 1892, ch. 678) § 7; originally revised from R. S., pt. 1, ch. 1, tit. 1, § 1; L. 1834, ch. 8, L. 1880, ch. 340; L. 1884, ch. 351; L. 1886, ch. 610; L. 1887, ch. 69; L. 1888, ch. 150, as amended by L. 1889, ch. 212.

See *People v. Central R. R. Co. of N. J.* (1870), 42 N. Y. 283.

Jurisdiction of land under water of the Hudson river west of the boundary line remains in the state of New Jersey, and such state has the right to tax such land, although by the agreement of 1833, exclusive jurisdiction of the waters in such portion of the Hudson river was given to the state of New York; the jurisdiction of the state of New York is confined to the waters only, and does not extend to the land beneath them. *Central R. R. Co. v. Jersey City* (1908), 209 U. S. 473, 52 L. ed. 896, 28 Sup. Ct. 592.

Jurisdiction of adjoining waters does not vest exclusive jurisdiction in the Federal government over the sea adjoining the two states, nor does it abdicate any rights in favor of the United States; the statute simply fixes the boundaries between the two states. *Hamburg-American Steamship Co. v. Grube* (1905), 196 U. S. 407, 49 L. ed. 529, 25 Sup. Ct. 352, affg. *Grube v. Hamburg-American Steamship Co.* (1903), 176 N. Y. 383, 68 N. E. 666.

A vessel fastened to a wharf on the western side of the Kill von Kull is within the jurisdiction of the district court of New Jersey, *Hall v. Devoe Co.* (1882), 14 Fed. 183; *The Norma* (1887), 32 Fed. 411; see also *The L. W. Eaton* (1878), 9 Ben. 289.

§ 8. **Restoration of monuments.**—The state engineer and surveyor shall during the year 1893, and every third year thereafter, cause to be made an examination and inspection of all the monuments of the state boundary, and make a detailed report thereof to the legislature. The state engineer and surveyor, in co-operation with persons duly authorized by the adjoining state, shall restore or replace all injured, displaced or removed monuments, and cause suitable stone monuments to be set wherever such are now lacking at the points where such state boundary is intersected by the boundary of any towns or counties of this state, or by any highway.

Source.—Former State L. (L. 1892, ch. 678) § 9; originally revised from L. 1886, ch. 449, § 2.

References.—Unlawful interference with monuments is a felony, Penal Law 1423, subds. 5, 6.

§ 9. **Saving clause.**—This article shall not be construed as a relinquishment by the state of New York of any territory to which it now has title, or over which it now has jurisdiction.

Source.—Former State L. (L. 1892, ch. 678), § 10. Section was new in former State Law.

§ 10. **Defense of state sovereignty and jurisdiction.**—The governor shall, at the expense of the state, employ counsel and provide for the defense of any action or proceeding, instituted against the state, or against any person deriving title therefrom, to recover any lands within the state, under pretense of any claim inconsistent with its sovereignty and jurisdiction.

Source.—Former State L. (L. 1892, ch. 678) § 11; originally revised from R. S., pt. 1, ch. 1, tit. 2, § 3; Id., ch. 8, tit. 1, § 15.

References.—Attorney-general to prosecute actions in name of state. Executive Law, §§ 62-65, ante.

ARTICLE III.

CESSIONS TO THE UNITED STATES.

Section 20. Cession without reservation.

21. Authorization of acquisition and cession of jurisdiction thereupon without reservation.

22. Cession with reservation of right to serve process.

23. Authorization of acquisition and cession of jurisdiction thereupon, with reservation of right to serve process.

24. Cession during ownership by the United States, with reservation of right to serve process.

25. Authorization of acquisition, and cession of jurisdiction thereupon during ownership by the United States, with reservation of right to serve process.

26. Cession during ownership by the United States and use for public purposes, with reservation of right to serve process.

27. Authorization of acquisition by the United States, and cession of jurisdiction thereupon during ownership by the United States and use for public purposes, with reservation of right to serve process.

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28. Cession during use for purposes thereof, with reservation of right to serve process.
29. Authorization of acquisition and cession of jurisdiction thereupon during use for purposes thereof, with reservation of right to serve process.
30. Authorization of acquisition and cession of jurisdiction thereupon, with reservations of concurrent jurisdiction and right to serve process.
31. Cession during ownership by the United States and use for purposes thereof, with sundry reservations.
32. Cession during use for purposes thereof, with sundry reservations.
33. Cession with sundry reservations.
34. Cession during use for purposes thereof, with sundry reservations.
35. Cession of jurisdiction to lands acquired for lighthouse purposes.
36. Acquisition by condemnation.
37. Saving clause.

§ 20. Cession without reservation.—Title and jurisdiction has been ceded to the United States by this state as follows:

1. *Little island in Hudson river.* A tract of land known as Little island, in the Hudson river, opposite New Baltimore, acquired by the United States for a light-house site and keepers' dwellings.

2. *Lands in West Oswego.* For the purpose of excavating and removing the same, to improve the navigation of the Oswego river, all the right and title of the state of New York in and to the following described property, namely: Lots one hundred and twenty-three, one hundred and twenty-four and one hundred and twenty-five in fortification block number two in West Oswego, New York, the same being part of the island situate in the Oswego river near its mouth.

Source.—Former State L. (L. 1892, ch. 678) § 20; L. 1899, ch. 463, § 1, part included as subd. 1; originally revised from L. 1854, ch. 292.

§ 21. Authorization of acquisition and cession of jurisdiction thereupon without reservation.—The United States has been authorized to acquire the following tracts or parcels of land, and jurisdiction thereof has been ceded to the United States by this state upon such acquisition:

1. *On the Long Island coast.* Certain tracts of land on the Long Island coast, each tract not exceeding one-half acre in area, for building sites for life saving stations.

Source.—Former State L. (L. 1892, ch. 678) § 21, subd. 1; originally revised from L. 1873, ch. 584.

2. *Priming Hook, Columbia county.* A tract of land one-half acre in area at Prymon's Hook, otherwise called Priming Hook point, Columbia county, for a site for a beacon light.

Source.—Former State L. (L. 1892, ch. 678) § 21, subd. 2; originally revised from L. 1885, ch. 7.

3. *Calver's plat, Columbia and Rensselaer counties.* A tract or parcel

of land consisting of one acre of the south point of the island known as Calver's plat. Said island lies in the Hudson river, part in the county of Columbia, and part in the county of Rensselaer, and in the town of Schodack; the said acre conveyed under this title is bounded as follows: Beginning at a stake and stones at the south point of said Calver's plat, and runs north to stake and stones at a point on the west side of said island, 6 chains; thence S. 85.5° E., 3 chains to high-water mark, to the water's edge on the east shore of said island; then S. 12.25° W., 3 chains and 11 links to a point on the shore; thence S. 73.75° W., 1 chain and 75 links to a point on the shore; thence S. 35.5° W., 2 chains and 30 links to the place of beginning at the south point of said island, for the construction and maintenance of a light-house, beacons and keepers' dwellings.

Source.—Former State L. (L. 1892, ch. 678) § 21, subd. 3; originally revised from L. 1855, ch. 19, first paragraph.

4. *Near Mull's plat, Rensselaer county.* A tract or parcel of land lying in the Hudson river, in the county of Rensselaer, and state of New York, lying north of a line running S. $76^{\circ} 45'$ E., and more particularly described as follows, viz.: Beginning at a stake set up at the west side of an island known as Mull's plat, on a course of S. $76^{\circ} 45'$ E. from the northeast corner of Barrent Ten Eyck's brick house, now occupied by Thomas C. Houghtailing, and runs from the said stake along a line of marked trees standing on the north point of an island known as Parcey's island, and now in the possession of the parties of the first part, and then runs from the aforesaid stake S. $76^{\circ} 45'$ E., 6 chains and 60 links to the water's edge on the east side of the aforesaid island; then northerly along the water's edge and east side thereof, to the north point of the aforesaid island; then southerly along the water's edge and west side to the place of beginning, containing an acre of land, be the same more or less, for the construction and maintenance of a light-house, beacons and keepers' dwellings.

Source.—Former State L. (L. 1892, ch. 678) § 21, subd. 4; originally revised from L. 1855, ch. 19, second paragraph.

5. *Poplar island, Rensselaer county.* A tract or parcel of land in the town of Schodack, county of Rensselaer, and on the north end of an island known by the name of Poplar island, bounded and described as follows, viz.: Beginning at a stake set upon the west shore of the aforesaid island, and on a course of S. $78^{\circ} 30'$ E. from the northeast corner of William O. Lawton's brick store, and runs thence from the said stake, N. $78^{\circ} 30'$ E., 3 chains and 60 links to a stake on the east side of said island; then along the east side thereof, N. 9° W., 3 chains and 59 links, to a point on the north end of the aforesaid island; then S. 80° W., 2 chains, to a point on the north and west shore of said island; then along the west shore thereof, S. $14^{\circ} 15'$ W., 4 chains and 4 links, to the place of beginning, containing

one acre of land be the same more or less, for the construction and maintenance of a light-house, beacons and keepers' dwellings.

Source.—Former State L. (L. 1892, ch. 678) § 21, subd. 5; originally revised from L. 1855, ch. 19, third paragraph.

6. *Water supply at West Point.* Such tracts of lands, lands under water, rights of way and easements, at or near the United States military post at West Point, as have been acquired or may be required for the purpose of increasing the water supply of such post, the commanding officer of said post being authorized to enter upon any lands to make surveys thereof for such purpose.

Source.—Former State L. (L. 1892, ch. 678) § 21, subd. 6.

7. *Land in the city of Buffalo.* Such lands now owned by the state under the waters of Niagara river or in the vicinity of said river in the city of Buffalo, including such lands as are now used for canal purposes in the city of Buffalo and as may be deemed abandoned by the canal board, as may be required by the United States in the construction of a ship canal from Lake Erie to the foot of Squaw island in the city of Buffalo.

Source.—L. 1904, ch. 393, § 1.

8. *Sacketts Harbor.* In the village of Sacketts Harbor or town of Hounsfield, county of Jefferson, to carry water through pipes from the waters of Lake Ontario and Henderson bay to Madison barracks, for the water supply at that point of the military post of the United States, and to acquire the title of lands necessary for that purpose, or the right of way only. And the state of New York hereby cedes to the United States the right to lay such pipes under and along the highways of said state, provided the same are restored to as good condition as the same were in before such pipes were laid, and to enter upon said highway and keep the said pipes in repair, upon the same condition, and hereby concedes jurisdiction to the said United States over the lands and franchises which the United States has acquired for the purpose of such water supply, or may acquire.

Source.—L. 1893, ch. 261, § 1.

§ 22. **Cession with reservation of right to serve process.**—Title and jurisdiction to the following described tracts or parcels of land have been ceded to the United States by this state on condition the jurisdiction so ceded should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein:

1. *Montock point, Suffolk county.* A tract of land at Montock point, in the county of Suffolk, known by the name of Turtle hill, and bounded as follows: "Beginning at the beach, and at a rock lying on a hummock, at the bottom of the said hill, and runs thence N. 82° W., 11 chains and 58

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links; thence S. 5° W., 5 chains; thence S. 15° E., 9 chains, to a rock marked John Champlain, 1788; thence on the same course to low water mark; thence northeasterly along low water mark, until the point of beginning bears N. 82° W.; thence to the place of beginning," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 1; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 1.

2. *In Huntington, Suffolk county.* "All that certain lot, piece or parcel of land at the northern extremity of Eaton's neck, in the town of Huntington, in the county of Suffolk, beginning at the northernmost point thereof, upon the shore at high water, which is distant from a stone fixed in the ground and bears N. 12° W., 2 chains and 24 links; thence along the high water line of the shore S. 75° W., 12 chains and 75 links; thence S. 12° E., 2 chains and 45 links to a stone fixed in the ground; thence S. 12° E., 2 chains and 58 links; thence S. 36° E., 2 chains and 70 links; thence S. 63° E., 1 chain and 82 links; thence N. 70° E., 10 chains and 17 links; thence N. 12° W., to the stone first mentioned 5 chains and 62 links; thence N. 12° W., 2 chains and 24 links to the place of beginning, containing ten acres," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 2; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 2.

3. *Islands in New York harbor.* Three certain islands in and about the harbor of New York, viz.: Bedlow's island and Ellis or Oyster island, bounded on all sides by the waters of the Hudson river, and Governor's island, bounded on all sides by the waters of the East river and Hudson river.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 3; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 3.

4. *Great Gull and Little Gull islands, Suffolk county.* Great Gull island and Little Gull island, in the county of Suffolk, and bounded on all sides by the waters of the East river, acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 4; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 4.

5. *Sands or Watch point, Queens county.* A tract of land at Sands or Watch point, on Long Island, in the town of North Hempstead, county of Queens, described as follows: "Beginning on the easterly side of said point, at a place or point in the line of ordinary high water mark, being N. 56° E., from a large walnut or hickory tree, marked on three sides, standing upon the upland, and running thence (from the said point in high water mark) across the said point of land on a course S. 56° W., so as to pass about four feet southerly of a small marked buttonwood tree, standing on the bank, and passing through the center of the said walnut or

hickory tree marked on three sides, and through the center of a high white oak tree marked on two sides, to ordinary high water mark on the westerly side of said point of land; and thence to the line of ordinary high water mark to and around the said point of land to the point or place of beginning, in the line of ordinary high water mark on the easterly side of said point of land, containing five acres of land, be the same more or less," acquired for the erection of a light-house.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 5 originally revised from R. S., pt. 1, ch. 1, tit. 3, § 5.

6. *Galoo island, Lake Ontario.* A tract of five acres on the head of Galoo island, in Lake Ontario, "Commencing 75 links S. 45° E., from a large oak tree standing on the lake shore at a stake and stones marked U. S., from thence S. 45° W., 12 chains and 90 links to a cedar stake and stones marked U. S., from thence northwesterly along the lake shore 11 chains and 80 links to a point, on the edge of a large flat rock 2 chains due south from the center of the spot fixed on for a light-house, from thence N. 45° W., 2 chains and 65 links on a flat rock, from thence N. 45° E., 5 chains and 80 links to the place of beginning," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 6; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 14.

7. *Island near Rouse's Point, Lake Champlain.* A small island near Rouse's Point, on Lake Champlain, called Island Point; and also over the land under the water opposite to lots number 60, 61, 62, 63, 64, 65 and 66 of the small lots in the tract of land heretofore laid out for the Canadian and Nova Scotia refugee: "Beginning on the west shore of Lake Champlain, in the line run for the north bounds of this state, and running thence east, to the distance of 500 feet from low water's mark; thence southerly, keeping at the said distance of 500 feet from low water's mark of said shore of Lake Champlain, and the shore of said island, until a west course will strike the southwest corner of the said lot number sixty-six, then west to the same, and then northerly, following the shore of the said lake, and the shore of the said island, to place of beginning."

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 7; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 15.

8. *At mouth of Oswego river.* A tract of six acres at the mouth of the Oswego river, and on the southerly side of the Oswego fort, in the county of Oswego, bounded as follows, viz.: "Beginning at a stake and stones marked L. H. standing S. 35° W., 82 links, from the southwest angle of the fort; thence S. 75° E., 9 chains and 20 links, to a stake and stones marked L. H., thence S. 15° W., 7 chains 35 links, to a stake and stones marked L. H., thence N. 75° W., 7 chains and 65 links, to a stake and stones marked L. H., standing on the bank of the lake; thence northerly along said bank, to a point where the north line of the lot intersects

said bank; thence southeasterly along said line about 48 links, to the place of beginning," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 8; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 16.

9. *At mouth of Genesee river.* A tract of three acres and 115 rods, at the mouth of the Genesee river, on the west side thereof, being part of village lot number twenty-eight, in the village of Charlotte, in the former town of Gates, and county of Monroe, bounded as follows: "Beginning at the easterly side of Main street, at a stake and stones one chain southerly from the northeasterly corner of said lot number twenty-eight, running thence S. 61° 45' E., 2 chains and 50 links, to a stake and stones; thence N. 28° 15' E., 1 chain, to the northerly line of said lot; thence S. 61° 45' E., 8 chains and 48 links, to the said river; thence S. 26° W., along the said river, 2 chains to a stake and stones; thence N. 61° 45' W., 2 chains and 50 links, to a stake and stones; thence S. 2 chains, to the southerly line of said lot number twenty-eight; thence N. 61° 45' W., 8 chains and 63 links, along the said line, to the said Main street; thence N. 28° 15' E., 3 chains to the place of beginning, containing three acres and 150 rods," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 9; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 17.

10. *In Sodus, Wayne county.* A tract in the town of Sodus in the county of Wayne, bounded as follows: "Beginning on the shore of Lake Ontario, on the east bounds of Ontario street, running thence south on the said east bounds of the street 9 chains and 16 links, to a cedar post at the north end of Captain Wickham's board fence; thence N. 63° 40' E., 4 chains and 23 links, to a cedar stake near the south point of the bank on the north side of the flat; thence N. 40° E., 3 chains and 37 links, to the shore of the lake; thence along the shore N. 36° 30' W., 3 chains and 85 links; thence N. 66° W., 3 chains and 98 links, to the place of beginning; containing three acres and one-fourth, and thirty perches of land," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 10; originally revised from R. S. pt. 1, ch. 1, tit. 3, § 18.

11. *At Buffalo, Erie county.* A tract of half an acre in Buffalo, Erie county, described in a deed thereof, executed by Joseph Ellicott, as attorney for the grantors, to the United States as follows: "All that certain tract of land, situate, lying and being in the village of Buffalo, in the county of Niagara and state of New York, being part or parcel of a certain township which, on a map or survey of divers tracts or townships of land made for the proprietors by Joseph Ellicott, surveyor, is distinguished by township number eleven, in the eighth range; beginning at a stone in the northern bounds of outer lot number thirty-six, in said

village, standing N. 48° E., 54 links from the northwest corner of said lot, thence bounding on land conveyed to Joseph and Benjamin Ellicott, by deed bearing date February 29, 1812, N. 48° E., 6 chains and 1 link to the southwestern bank of Buffalo creek; thence bounding on the said bank of the said creek, N. 87° W., 1 chain and 27 links; thence by a line parallel to the northern bounds of said lands conveyed to Joseph and Benjamin Ellicott by deed as aforesaid, S. 48° W., 5 chains and 11 links to a stone, and thence S. 42° E., 90 links, to the place of beginning, containing half an acre, be the same more or less," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 11; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 9.

12. *At Oldfield point, Suffolk county.* A tract of land at Oldfield point, on Long Island sound, in the county of Suffolk, bounded as follows: "Commencing at a stake at high water mark, from thence running a course S. 49° 20' W., 788 feet, to a cherry tree and fence; thence down along the fence a course N. 30° 18' W., from the cherry tree to high water mark, 245 feet; thence the same course, to low water mark; thence along the sound at low water mark, a northerly and easterly course round the point, to a place opposite to the place of beginning; and thence the first mentioned course, to the stake or place of beginning," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 12; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 20, part.

13. *At Throg's neck, Westchester county.* A tract of land at Throg's neck, in the county of Westchester, bounded as follows: "Commencing at high water mark, and running a course N. 36° 30' E., to a certain painted rock, and from thence the same course to high water mark, being 766 feet; thence southerly and westerly around the point, to a painted rock at low water mark; thence the first mentioned course, to the place of beginning," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 13; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 20, part.

14. *In New Utrecht, Kings county.* A tract of land in the town of New Utrecht, Kings county, described as follows: "Beginning at the bay or river on the division line of the hereby described premises, and land now or late belonging to Jane Smith, and running thence along the said division line N. 58° E., 1 chain and 50 links, to a certain stake standing on the bank; thence along the said line N. 37° E., 67 chains and 80 links, to certain lands now or late belonging to John S. Denyse; thence along the last mentioned lands S. 57° E., 3 chains and 92 links, to certain lands now or late belonging to Isaac Cortelyou; thence along the last mentioned lands and along certain lands now or late belonging to Jacques Cortelyou, S. 28° W., 37 chains 42 links; thence along the last

mentioned lands to the five following courses, to wit, S. 38° 40' W., 23 chains, to a certain rock; thence S. 41° W., 4 chains 47 links; thence S. 25° E., 3 chains and 25 links; thence S. 64° W., 7 chains 43 links; thence S. 41° W., 1 chain and 30 links, to the bay or river aforesaid; thence northwesterly along the said bay or river, to the place of beginning; containing sixty acres, one rood and six perches of land"; and the second of which is bounded as follows: "Beginning at the southeasterly point of the land next before described, thence N. 62° E., 180 yards; thence N. 20° W., 75 yards; thence N. 42° E., 310 yards; thence S. 60° E., 242 yards; thence S. 25° W., 160 yards; thence N. 60° W., about 185 yards, to a point near a pond; thence S. 33° W., 195 yards; thence S. 53° W., 220 yards, to the bay or river; thence along the said bay, 90 yards, to the place of beginning; according to a plat and survey thereof, containing sixteen acres and one-half acre of land," acquired for the erection of fortifications thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 14; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 21, part.

15. *In New Utrecht, Kings county.* A tract of land in the town of New Utrecht, Kings county, described as follows: "Beginning at the water's edge at the southeast point of the first parcel of land above described; thence N. 41° E., 1 chain and 30 links; thence N. 64° E., 7 chains and 43 links; thence N. 25° W., 3 chains and 25 links; thence N. 41° E., 4 chains and 47 links; thence N. 38° 40' E., 9 chains and 10 links; thence S. 60° E., 11 chains and 69 links; thence S. 25° W., 7 chains and 28 links; thence N. 60° W., 8 chains and 41 links; thence S. 35° W., 8 chains and 86 links; thence S. 53° W., 10 chains; thence along the water's edge, to the place of beginning; containing seventeen acres, fourteen perches and one hundred and five yards of land," acquired for the erection of fortifications thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 15; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 21, part.

16. *In Islip, Suffolk county.* A tract of land and beach, in the town of Islip, in the county of Suffolk, being the west end of the east branch of Fire-island inlet, "beginning on the southerly side of the same, at low water mark, on the Atlantic ocean, in a range of branded stakes; thence north thirty-two chains, to low water mark on the Great South bay, including all the land to the west of the said north line to Fire-island inlet aforesaid, at low water mark," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 16; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 22.

17. *In Haverstraw, Rockland county.* A tract of land in the town of Haverstraw, in the county of Rockland, being the extreme point of land called Stony-Point, on the Hudson river, "beginning at the river

at high water mark, on the south side of the point, at a stake, thence across the point, north four degrees west (passing thirty-five links to the west of the fort) to the river at high water mark; thence along the same at high water mark round the point to the place of beginning," acquired for the erection of a light-house or beacon thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 17; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 23.

18. *In Cornwall, Orange county.* A certain tract of land in the town of Cornwall, in the county of Orange, described as follows: "Beginning at the northeasterly corner of the piece of land herein intended to be described, at the mouth of a small creek which enters into the Hudson river near the old stores, and thence up and along the southeasterly side of the said creek to its intersection with the northeasterly side of the road leading from West-Point to John Cronkhite's; thence southeasterly along the northeasterly side of the said road to its intersection with the road which leads from West-Point southerly to the Widow Kinsley's; thence from said point of intersection due south, to a point 7 chains south of the line which divides the Gridley farm from the post of West-Point; thence S. 81° E., to the Hudson's river, on a line parallel with the said division line; and from thence northwardly along the low water mark of the said river, to the place of beginning, containing two hundred and twenty acres or thereabouts."

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 18; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 25.

19. *In Lyme, Jefferson county.* A certain tract of land in the town of Lyme in the county of Jefferson, being the extreme point of land called Tibbet's point, described as follows: "Beginning at a stake standing on the extreme point thereof, on the bank of Lake Ontario; thence N. 7° 30' E., 5 chains to a basswood sapling cornered; thence S. 82° 30' E., 5 chains and 50 links to a stake cornered, 10 links southwesterly from a maple tree blazed; thence S. 7° 30' W., 7 chains and 50 links to a stake on the bank of Lake Ontario, 9 links southerly from a walnut tree blazed; thence N. 49° 45' W., 5 chains and 99 links to an angle; thence S. 70° 30' W., 97 links to the place of beginning, containing two acres and ninety-six hundredths of an acre of land," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 19; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 26.

20. *On Plumb island, Suffolk county.* A tract of land containing three acres, on the south side of the west end of Plumb island, in the county of Suffolk, and described as follows: "Beginning at low water mark, opposite a rock on the edge of the upland, marked U. S. 1826, and running thence north four degrees east, six chains and three links to a stake on the hill; thence running south seventy-nine degrees west, over

a rock at the bottom of the bank marked U. S. to the west point of said island to low water mark; thence southeastwardly along the shore at low water mark to the place of beginning, opposite to the first mentioned rock, butted and bounded northwardly and eastwardly by lands of Richard Jerome; southwardly and westwardly by the waters of Gardiner's bay and Plumb Gut''; acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 20; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 27.

21. *On North Brothers island, Queens county.* A tract of land at the western extremity of North Brothers island, in Long Island sound, county of Queens, containing not less than one nor more than five acres, acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 21; originally revised from L. 1833, ch. 96, § 1.

22. *In Esopus, Ulster county.* A tract of land under water in the town of Esopus, Ulster county, at or near the junction of the Roundout and Hudson rivers, not exceeding two acres in area, acquired for the erection of a light-house or beacon light thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 22; originally revised from L. 1833, ch. 96, § 2.

23. *At Esopus meadows, Ulster county.* A tract of land in the town of Esopus, in the county of Ulster, at a place called the Esopus meadows or flats, in the Hudson river, and covered with the waters, and which is described as follows: "Beginning at a point on the west side of the channel of the Hudson river, on the edge of the said channel, in eighteen inches water at low water, from whence a course S. 2° E. will strike the northwest corner of Governor Lewis's dock, and a course N. 2° E. will strike the window in the store on Thompson's dock, and a course S. 43° E. will strike the northeast corner of Emmet's house, and a course N. 65° W. will strike a small house on the west side of the river, occupied by Henry Terpenning, and a course S. 27° W. will strike the store on Degraff's dock; thence from said point down the river five chains; thence towards the west bank of the river at right angles to the first course five chains; thence with a course parallel to the first course five chains; thence with a course parallel to the second course five chains, to the place of beginning," acquired for the erection of a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 23; originally revised from L. 1839, ch. 29, §§ 1, 2.

24. *In the city of Buffalo, Erie county.* A tract of land in the city of Buffalo on the east side of the Niagara river, described as follows: "Beginning at the point of intersection of the westerly line of the Lockport and Buffalo railroad with the southerly line of lot number eight of the state reserve; thence N. 82° 10' W., 75 feet, more or less, to the tow-

ing path of the Erie canal enlargement; thence N. 2° 10' E., 75 feet; thence S. 82° 10' E., 75 feet, more or less, to the Lockport and Buffalo railroad; thence S. 2° 10' W., 75 feet, to the place of beginning," acquired for the erection of a light-house or beacon thereon.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 24; originally revised from L. 1854, ch. 181.

25. *In the bay of New York.* A tract of land, being such portion of the lands under water comprising what is known as West bank, in the lower bay of the port of New York, and Old Orchard shoals, required * and occupied by the United States in the erection thereon of wharves and warehouses for the reception of goods and merchandise arriving in such port in vessels subject to quarantine by the laws of this state.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 25; originally revised from L. 1866, ch. 154.

26. *David's island, New Rochelle.* A tract of land situate in the harbor of New Rochelle, and known as David's island, acquired by the United States to be used for military purposes.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 26; originally revised from L. 1868, ch. 257, § 1.

27. *At West Point, Orange county.* Certain tracts of land at West Point, Orange county, acquired by the United States prior to May 15, 1875, for the erection and maintenance thereon of forts, arsenals, docks and piers, military academy, hospitals and other needful buildings, and for the maintenance of the national cemetery and an observatory.

Source.—Former State L. (L. 1892, ch. 678) § 22, subd. 27; originally revised from L. 1875, ch. 359.

28. *For aids to navigation on Old Orchard shoal.* For the purpose of establishing thereon lights or other aids to navigation on Old Orchard shoal; a tract of land under water inclosed by a circle of two hundred feet in diameter, the center of which shall be located as follows: the angle included between the ranges to Romer light and Sandy Hook light shall be thirty-five degrees and four minutes, the angle between the ranges to Sandy Hook light and Waackaack beacon shall be seventy-nine degrees and two minutes.

Source.—L. 1893, ch. 98, § 1, part.

29. *For fish preserve, Cape Vincent.* All that tract or parcel of land, situate in the village and town of Cape Vincent, county of Jefferson, and state of New York, and bounded as follows, viz.: "Beginning in the north margin of Broadway at the southwesterly corner of the Lee homestead lot and running thence along the north margin of Broadway south seventy-one degrees west, one hundred and ten feet to the southeasterly

* So in original.

corner of the Peo lot; thence north nineteen degrees, west along the easterly boundary line of the Peo lot, and also the Clark lot, and continued on the same course parallel with Murray street to the river Saint Lawrence a distance of about three chains; thence along the said river easterly to the northwesterly corner of the said Lee homestead lot; thence south nineteen degree, east, along the west boundary line of the Lee homestead lot, two chains, ninety links, to the place of beginning, being all the land, buildings, appurtenances, privileges, water rights, docks and cribs lying northerly of said Broadway and between the easterly and westerly boundary lines hereinbefore given, extended to include all water lot frontage, rights, privileges and erections upon, along, or in front of said one hundred and ten feet; also the already well-defined roadway leading from Murray street to the said mill lot hereinbefore bounded and described, subject, nevertheless, to the right of way thereon to and from the wharf lying westerly of said mill to persons doing business at said wharf.

Source.—L. 1895, ch. 193, § 1, part.

§ 23. **Authorization of acquisition and cession of jurisdiction thereupon, with reservation of right to serve process.**—The United States has been authorized to acquire the following tracts or parcels of land, and jurisdiction thereof has been ceded to the United States by this state upon such acquisition, on condition that such jurisdiction should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein:

1. *At Bluff point, Staten Island.* A tract at Bluff point, Staten Island, for the erection of fortifications thereon.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 1; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 6.

2. *On Staten Island.* Certain lands on Staten Island belonging to the state of New York and used for military purposes, prior to February 6, 1836, required by the United States for the construction and maintenance of proper defenses for the protection of the harbor of New York, and which the commissioners of the land office have been authorized to convey accordingly.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 8; originally revised from L. 1836, ch. 19.

3. *At Black Rock, Erie county.* A tract or tracts of land in the south village of Black Rock, at or near Buffalo, being so much of blocks Nos. 167, 168 and 186, in such village, required for the site of barracks and defensive works.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 3; originally revised from L. 1842, ch. 316.

4. *At sundry places for light-house purposes.* Certain tracts of land, and land under water, for the construction and maintenance of light-houses, beacon lights and keepers' dwellings:

For a beacon or range light on Staten Island, in the rear of the Elm Tree beacon, to serve as a range for the Swash channel.

For a light-house on Point au Roche, on the west side of Lake Champlain.

For three beacons in the Hudson river—one at the south point of the island east of Barren Island; one at the north point of the island opposite and east of Coeymans' bar; and one on the point of the island at the mouth of Schodack channel, and opposite Mall rocks.

For a beacon to be placed on the extreme eastern point of the north fork of Long Island.

For a light-house on or near Carlton head, in the St. Lawrence river.

For a beacon light on south end of Cow or Campbell's island, in the Hudson river, near Castleton.

For a beacon light on Little island, in the Hudson river, near New Baltimore.

For a beacon light at Priming Hook point, east side of Hudson river, north of Hudson city.

For a beacon light west side of Hudson river, between Athens and Catskill.

For a first-class light-house near "Great West bay," Suffolk county, Long Island, New York.

For a beacon light at Lloyd's harbor, Suffolk county, Long Island, New York.

For a light-house at Horton's point, Suffolk county, Long Island, New York.

For a light-house at Race point, Fisher's island, Suffolk county, New York.

For a light-house at or near Windmill point, Lake Champlain, New York.

For a beacon light on "Isle au Motte," Lake Champlain, New York.

For nine beacon lights near Whitehall, Lake Champlain, New York.

On Fisher's island, eastern end of Long Island sound, New York, ten and three-tenths acres, more or less. On Barber's point, Lake Champlain, New York, nine acres, more or less. On Bluff point, Valcour island, Lake Champlain, New York, two acres, more or less. On the west bank of Oak Orchard creek, near its mouth, in Orleans county, purchased from Abram V. Clark of the same county, one-half acre, more or less; and at Fair Haven, Cayuga county, New York, five acres or less.

For a light-house on North Brother island or vicinity, East river, New York.

For a light-house on Hart island or vicinity, western end of Long Island sound, New York.

For a light-house at or near Crown Point, Lake Champlain, New York.

For a light-house site and keeper's dwelling on Cumberland head, in the county of Clinton, not exceeding ten acres, adjoining the site occupied by a light-house in 1872.

For a light-house and other light-house purposes on Lake Ontario, in the town of Somerset, county of Niagara.

For light-houses on the Hudson river, at Tarrytown, Livingston creek and in Persey's reach, between Catskill and Hudson.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 4; originally revised from L. 1853, ch. 480; L. 1854, ch. 292, §§ 1, 2; L. 1855, ch. 5, §§ 1, 2; L. 1867, ch. 720, §§ 1, 2; L. 1871, ch. 326, §§ 1, 2; L. 1872, ch. 369, §§ 1-5; L. 1874, ch. 49; L. 1882, ch. 109.

5. *At Suspension Bridge.* A tract of land in the village of Niagara city, New York, described as follows: "Beginning at the northeast intersection of Bridge and Spring avenues, and running in a northerly direction along said Spring avenue eighty-six feet and seven inches; thence running easterly in a line parallel with the line of Bath avenue sixty-four feet, more or less, to a point sixteen feet from the lands of the New York Central railroad company; thence northerly to Bath avenue, parallel with and distant sixteen feet from the said lands of the New York Central railroad company; thence easterly along Bath avenue sixteen feet; thence southerly 117 feet, eleven inches, more or less, to the line of Bridge avenue; and thence westerly along the line of Bridge avenue seventy-five feet, to the point or place of beginning," for the purpose of a custom-house and post-office.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 5; originally revised from L. 1867, ch. 675.

6. *At Oswego.* A tract of land in the city of Oswego, described as follows: "Commencing at the southwestern angle of the cut stone work of the United States pier, runs thence S. 3° W., 7 feet, to the east side line of Third street; thence S. 17° E., along said street line, 36 feet; thence S. 87° E., 115 feet; thence N. 3° E., 261 feet, to a point in the west line of Second street prolonged; thence N. 17° W., along said Second street, 120 feet to the northerly side of the United States pier; thence S. 56° 30' W., along the northern line of said pier, 110 feet, to the northwestern angle thereof; thence S. 17° E., along the westerly side of said pier, 250 feet, to the place of beginning," for the purpose of erecting, repairing and maintaining a pier for the protection of the harbor of Oswego.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 6; originally revised from L. 1861, ch. 223.

7. *At Oswego.* A tract of land in the north end of blocks four and five, of military lot number five, and in the first ward of the city of Oswego, and described as follows: "Beginning at a point on the margin of Lake

Ontario, 164.35 feet S. 88° 14' E. of the point of intersection of the west line of Fourth avenue with the east side of the new pier, and running thence S. 3° 30' W., parallel to the line of Fourth avenue, 155.02 feet to a nail in a stake, marked 'U. S.'; thence N. 86° 30' W., at right angles with the last mentioned line, and with the line of Fourth avenue, and passing through a nail in a stake on the west line of Fourth avenue 150 feet, from its intersection with the east line of the pier, 406.25 feet, to a nail in a stake, marked 'U. S.'; thence N. 3° 30' E., parallel to the line of Fourth avenue, and at right angles with the last mentioned line 75.95 feet, to a cross on a boulder on the margin of the lake; thence along the margin of the lake, at low water mark, to the place of beginning, together with all the land under water lying in front of the said above bounded and described premises; the plat-so bounded containing, exclusive of the land under water, 1.201 acres of land," for occupation for the storage of materials, and as sites for offices and storehouses, for the purpose of erecting, repairing and maintaining a pier, for the formation of a harbor at Oswego.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 7; originally revised from L. 1872, ch. 111.

8. *At West Point, Orange county.* A tract or tracts of land constituting, on May 15, 1888, the whole or a part of the estate of E. V. Kinsley, deceased, and to the south of and adjoining the government lands at West Point, Orange county, for the erection and maintenance of forts, magazines, arsenals, dockyards, military academy, hospitals and other needful buildings.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 8; originally revised from L. 1888, ch. 300.

9. *Round pond, Orange county.* A tract of land and land under water known as Round pond, in the town of Highlands, Orange county, and certain lands adjacent thereto amounting in all to 49.72 acres, for increasing the water supply of West Point; and any minerals, mineral right, or right appertaining to such mineral right, in such pond, and the lands adjacent thereto, owned by the United States, and in lands through which the right of laying a water pipe from such pond to the lands of the United States at West Point, was granted prior to January 1, 1881.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 9; originally revised from L. 1880, ch. 559; L. 1881, ch. 239.

10. *At Whitehall narrows, Lake Champlain.* A tract of land under water in Whitehall narrows, Lake Champlain, at a point on the westerly edge of the channel opposite Devil's Pulpit, so called, in the town of Dresden, Washington county, described as follows: A circle 200 feet in diameter, the center of which bears from the following points as fol-

lows: From beacon No. 12, N. 45° 30' E.; from beacon N. 15, S. 37° W.; from Devil's Pulpit, S. 60° E.; from Pulpit point, N. 50° E., for the purpose of erecting a light-house thereon, and which the commissioners of the land office have been authorized to convey accordingly.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 10; originally revised from L. 1887, ch. 92.

11. *At Whitestone point, Queens county.* A tract of land twenty-five feet square, situate on the north end of Whitestone point, Queens county, for the purpose of establishing and maintaining lights or other aids to navigation thereon.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 11; originally revised from L. 1889, ch. 445.

12. *On Riker's island, East river.* A tract of land of the area of a circle of twenty-five feet in diameter, on the northwest point of Riker's island, East river, for the purpose of establishing and maintaining lights or other aids to navigation thereon.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 12; originally revised from L. 1889, ch. 445.

13. *At Spuyten Duyvil.* Certain tracts of land, or land under water, necessary for the improvement of the Harlem river and Spuyten Duyvil creek, and for the construction of a channel, from the North river to the East river, through the Harlem kills.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 13; originally revised from L. 1876, ch. 147; L. 1880, ch. 65; L. 1882, ch. 377.

14. *In the city of New York.* A certain tract or tracts of land in the city of New York, being such parts of the City Hall park as have been conveyed to the United States by the mayor, aldermen and commonalty of the city of New York; except such part of such land as may have been re-conveyed by the United States to the mayor, aldermen and commonalty of the city of New York.

Source.—Former State L. (L. 1892, ch. 678) § 23, subd. 14; originally revised from L. 1860, ch. 506; L. 1869, ch. 649.

15. *In the city of Kingston for the purpose of a federal building.* All that certain lot and piece of land in the city of Kingston, beginning on the northerly line of Broadway where said northerly line of Broadway is intersected by the easterly line of Grand street, and from said point of beginning running along the easterly side of Grand street aforesaid north thirty-nine degrees twenty-six minutes east fifty-seven feet three inches to the southerly line of Prince street; thence along the said southerly line of Prince street south eighty-two degrees east one hundred seventy-four feet to a stake on said southerly line of Prince street; thence from said stake south twenty-two degrees west seventy-one feet to a stake set in the ground, from said last mentioned stake north fifty-nine degrees thirty-

two minutes east thirty-two feet one inch to a stake set in the ground; thence from said last mentioned stake south thirty-one degrees thirteen minutes west sixty-eight and thirty-five one-hundredths feet to a point on Broadway one hundred forty-eight feet from the place of beginning; and thence from said point along the north line of Broadway aforesaid north fifty-three degrees thirty-two minutes west one hundred forty-eight feet to the place of beginning; containing about fifteen thousand one hundred square feet.

Source.—L. 1903, ch. 54, §§ 1-4.

16. *In the city of New York.* The block of land bounded by Bowling Green, Whitehall, Bridge and State streets, for a site for a custom-house.

Source.—L. 1893, ch. 22, §§ 1-3.

§ 24. Cession during ownership by the United States, with reservation of right to serve process.—Title and jurisdiction to the following tracts or parcels of land have been ceded to the United States by this state, on condition that the jurisdiction so ceded should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as the land shall remain the property of the United States:

1. *At West Point.* A tract of land under water described as follows: "Beginning at a point at high water mark on the west shore of the Hudson river on south line of lands belonging to the United States and northeast corner of lands belonging to Edward V. Kinsley, and running thence into the river from high water mark S. 70° E., 125 feet; thence N. 31° E., 3165 feet, to a point fifty feet east of the most easterly point at high water mark of a point of land at base of 'Battery Knox'; thence N. 20° E., 1350 feet, to a point sixty feet east of high water mark at 'Gee's Point'; thence N. 52° 20' W., 1375 feet; thence N. 75° 30' W., 445 feet, to a point fifty feet north of the northwest corner of the 'North dock'; thence N. 47° 25' W., 2175 feet, to a point three hundred feet east of high water mark; thence N. 23° 45' W., 1420 feet, to a point one hundred feet east of high water mark; thence N. 7° 55' W., 1718 feet, to a point fifty feet east of high water mark; thence N. 9° 5' W., 1803 feet, to a point one hundred feet east of high water mark, and in range with the north line of the United States lands; thence N. 89° 20' W., 100 feet, to a bolt set in a rock for the northeast corner of said lands of the United States"; acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, batteries and other needful military structures and appurtenances. Certain lands in the county of Orange, adjacent or contiguous to the military reservation at West Point, heretofore purchased by the United States, for the erection and maintenance thereon of forts,

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magazine, military academy, hospitals, docks, piers, and other needful buildings and for other military purposes of the United States Military Academy; and any roadways thereon not public highways across said reservation and also land under water of Hudson river adjacent to and lying in front of said purchased lands, for a distance toward the middle of said river not less than fifty and not more than one hundred feet from high water mark on said lands, for the erection of wharves and docks and for other military purposes of the United States.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 1; L. 1908, ch. 164, §§ 1, 2, incorporated; originally revised from L. 1876, ch. 410.

2. *At Governor's island.* A tract of land under water contiguous to the lands of the United States at Governor's island, described as follows: "Beginning at a point fifty feet from the head of the main wooden dock, commonly known as the quartermaster's dock and on a line with the north face of said dock, running thence S. 5° 13' W., 137 feet; thence S. 14° 44' W., 595 feet; thence S. 29° 25' W., 490 feet; thence S. 53° 58' W., 622 feet; thence N. 78° 27' W., 1088 feet; thence N. 18° 55' W., 1565 feet; thence N. 17° 4' E., 535 feet; thence N. 79° 58' E., 318 feet to a point fifty feet from the head of the Castle William's dock and on a line with the west face of said dock; thence N. 89° 48' E., 584 feet; thence S. 74° 23' E., 786 feet; thence S. 45° 44' E., 751 feet to a point fifty feet from the head of the stone dock, and on a line with the north face of said dock; thence S. 20° 33' E., 222 feet to the point of beginning," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 2; originally revised from L. 1880, ch. 196, first paragraph.

3. *At Bedloe's island.* A tract of land under water contiguous to the lands of the United States at Bedloe's island, described as follows: "Beginning at a point fifty feet from the head of the main dock or wharf and on a line with the southwest face of said dock; running thence S. 41° 13' W., 424 feet; thence N. 72° 13' W., 423 feet; thence N. 24° 23' W., 548 feet; thence N. 20° 19' E., 639 feet; thence N. 62° 1' E., 262 feet; thence S. 27° 7' E., 1255 feet, to a point fifty feet from the head of the main dock and on a line with the northeast face thereof; thence S. 33° 4' W., forty feet to the point of beginning," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 3; originally revised from L. 1880, ch. 196, second paragraph.

4. *At Ellis's island.* A tract of land under water contiguous to the lands of the United States at Ellis's island, described as follows: "Beginning at a point fifty feet from the head of the east dock and on a line with the north face of said dock; running thence S. 18° 30' E., 605 feet;

thence S. 71° 30' W., 202 feet; thence N. 81° 19' W., 313 feet; thence N. 32° 4' W., 178 feet, this line being parallel to the head of the west dock, and distant fifty feet from said dock; thence due north 577 feet; thence S. 70° 47' E., 424 feet, to the point of beginning," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 4; originally revised from L. 1880, ch. 196, third paragraph.

5. *At David's island.* A tract of land under water contiguous to the lands of the United States at David's island, described as follows: "Beginning at a point one hundred and fifty feet from the head of the new dock, commonly called the coal dock, and on a line with the northwest face of said dock; running thence N. 3° 20' E., 755 feet; thence N. 79° 5' E., 630 feet; thence N. 6° 12' E., 1096 feet; thence N. 52° 25' E., 552 feet; thence S. 69° 18' E., 647 feet; thence S. 36° 28' E., 604 feet; thence S. 35' E., 1066 feet; thence S. 13° 54' E., 834 feet; thence S. 23° 55' W., 427 feet; thence S. 71° 49' W., 1121 feet; thence N. 48° 18' W., 1550 feet, to the point of beginning," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 5; originally revised from L. 1880, ch. 196, fourth paragraph.

6. *At Fort Lafayette.* A tract of land under water contiguous to the lands of the United States at Fort Lafayette, described as follows: "Beginning at a point ninety-two feet west from the prolongation of the west face of the fort, and eighty feet north from the prolongation of the north face of the said fort, running thence S. 67° 34' E., 448 feet; thence S. 22° 26' W., 448 feet; thence N. 67° 34' W., 448 feet; thence N. 22° 26' E., 448 feet, to the point of beginning," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 6; originally revised from L. 1880, ch. 196, fifth paragraph.

7. *At Fort Hamilton.* A tract of land under water contiguous to the lands of the United States at Fort Hamilton, described as follows: "Beginning at a point at high-water mark on the western boundary line of the United States land there situate; running thence in continuation of said boundary line S. 64° 45' W., 320 feet; thence due south for 233 feet to a point seventy-five feet from head of the dock (or wharf) and on a line with the north face of said dock; thence S. 49° 37' E., 1915 feet to a point on the continuation of the southern boundary line of the said United States land; thence along said continuation N. 21° 10' E., 165 feet to a point at high-water mark, on said southern boundary line of said United States

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land," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 7; originally revised from L. 1880, ch. 196, sixth paragraph.

8. *At * Fort Wadsworth.* A tract of land under water contiguous to the lands of the United States at Fort Wadsworth (or Tompkins) described as follows: "Beginning at a point at high-water mark on the northern boundary line of the United States land there situate; running thence in continuation of said boundary line N. 73° 16' E., forty feet to low-water mark; thence in continuation of said boundary line N. 73° 16' E., fifty feet; thence S. 48° 23' E., 1073 feet; thence S. 9° E., 1652 feet; thence S. 18° 57' E., 700 feet; thence S. 40° W., 850 feet to a point on the continuation of the western boundary line of the said United States land; thence N. 30° 16' W., for 100 feet along said continuation of boundary line to low-water mark; thence N. 30° 16' W., for 350 feet along said continuation to a point at high-water mark on the western boundary line of the United States land," acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 8; originally revised from L. 1880, ch. 196, seventh paragraph.

9. *At Fort Schuyler.* A tract of land under water contiguous to the lands of the United States at Fort Schuyler, described as follows: "Beginning at a point on the boundary line of the land of the United States at high-water mark on the north shore of Throgg's Neck; running thence in continuation of said boundary line N. 21° 10' E., 257 feet to low-water mark; thence in continuation of said boundary line N. 21° 10' E., sixty-three feet; thence S. 1° 21' E., 988 feet; thence S. 41° E., 1350 feet; thence S. 77° 24' E., for 906 feet; thence S. 44° 20' E., for 543 feet; thence S. 5° 17' W., for 634 feet; thence S. 52° 15' W., for 622 feet; thence N. 63° 19' W., for 698 feet; thence N. 54° 13' W., for 1728 feet; then N. 49° 33' W., for 1065 feet to a point on the continuation of the boundary line of the said United States land at Throgg's Neck; thence on the line of said continuation N. 21° 10' E., for 77 feet to low-water mark; thence on line of said continuation N. 21° 10' E., for 123 feet to a point at high-water mark on the south shore of said Throgg's Neck and on the boundary line of the present United States land there situate"; acquired for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances.

Source.—Former State L. (L. 1892, ch. 678) § 24, subd. 9; originally revised from L. 1880, ch. 196, eighth paragraph.

* So in original.

§ 25. **Authorization of acquisition, and cession of jurisdiction thereupon during ownership by the United States, with reservation of right to serve process.**—The United States has been authorized to acquire the following tracts or parcels of land, and jurisdiction thereof has been ceded to the United States, upon such acquisition, on condition that such jurisdiction should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as the land shall remain the property of the United States.

1. *At sundry places for fortifications.* Certain tracts of land in or near Buffalo, at or near the mouth of the Genesee river, at or near Sackett's Harbor; and certain islands in the St. Lawrence river, between St. Regis and the Thousand Islands, for the sites of fortifications or defensive works.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 1; originally revised from L. 1846, ch. 25, § 1.

2. *In the city of Buffalo.* A tract or tracts of land in the city of Buffalo, not exceeding (in the whole) one acre, for the purpose of erecting a custom-house, warehouse, court-rooms, post-office, or for either or any of such purposes, and for steamboat inspectors.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 2; originally revised from L. 1854, ch. 1, § 1, as amended by L. 1855, ch. 399.

3. *In the city of Buffalo.* A tract of land in the city of Buffalo, not exceeding one acre, for the purpose of erecting a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 3; originally revised from L. 1888, ch. 357, § 1.

4. *In Sackett's Harbor.* A tract of land in the village of Sackett's Harbor, in the county of Jefferson, and bounded as follows: "South-westerly by the main street in said village, southeasterly by lands now or late of Edmund Luff and John Warden, heretofore conveyed to them by Augustus Sackett, and on the other sides by the waters of said harbor and of Black River bay, and commonly called Navy point, and the military establishment usually called Fort Tompkins, and being the same premises heretofore conveyed to the United States of America by the executors of the late Henry Eckford, containing about three acres of land more or less," for the purpose of erecting and maintaining thereon fortifications, defensive works or buildings for officers' quarters, and other necessary government purposes.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 4; originally revised from L. 1847, ch. 153, § 1.

5. *Islands in the St. Lawrence river.* Certain islands, or parts thereof,

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in the St. Lawrence river, for sites for beacon lights and other necessary government purposes.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 5; originally revised from L. 1847, ch. 153, § 2.

6. *North Dumplin island.* A tract of land in Long Island sound, called the North Dumplin or Hammock, containing about one acre, for the purpose of erecting a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 6; originally revised from L. 1847, ch. 196, § 1.

7. *In the city of Oswego.* A tract or tracts of land in the city of Oswego, not (in the whole) exceeding one acre, for the purpose of erecting a custom-house, warehouse, post-office and court-room thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 7; originally revised from L. 1854, ch. 17, § 1.

8. *In the village of Plattsburgh.* A tract or tracts of land in the village of Plattsburgh, not exceeding (in the whole) one acre and a half, for the purpose of erecting a custom-house, warehouse, post-office, and court-rooms, or either of them.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 8; originally revised from L. 1855, ch. 115, § 1.

9. *In the town of Plattsburgh.* A tract or tracts of land in the town of Plattsburgh, Clinton county, not exceeding in all one thousand acres, for military purposes, for use as a parade ground, or for any military purposes connected with the United States military post at Plattsburgh.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 9; originally revised from L. 1890, ch. 18, § 1.

10. *In the city of Utica.* A tract or tracts of land in the city of Utica, not exceeding in all one acre, for the purpose of erecting a building thereon to be used as a post-office and court-house.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 10; originally revised from L. 1872, ch. 533.

11. *In the city of Albany.* A tract or tracts of land in the city of Albany, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 11; originally revised from L. 1873, ch. 195, § 1.

12. *In the city of Utica.* A tract or tracts of land in the city of Utica, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 12; originally revised from L. 1873, ch. 195, § 1.

13. *In the city of New York.* A tract of land in the city of New York,

bounded by Whitehall, Pearl, Moore and Water streets, together with the buildings thereon, formerly known as the Old Produce Exchange.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 13; originally revised from L. 1886, ch. 46, § 1.

14. *In the city of New York.* A tract of land with the buildings and improvements thereon in the city of New York, bounded by Washington, West, Laight and Hubert streets, and occupied on March 16, 1883, by the United States, under lease, for customs purposes.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 14; originally revised from L. 1883, ch. 108, § 1.

15. *In the city of New York.* A tract of land in the city of New York, described as follows: Constituting the triangular piece of land, being that portion of the grounds commonly known as the Battery in the city of New York, lying westwardly of and adjoining the lands belonging to the United States on April 29, 1873, and between such lands and the slip or basin in the said Battery known as the New Whitehall boat slip.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 15; originally revised from L. 1873, ch. 320, § 1.

16. *At New Brighton, Richmond county.* A tract of land at New Brighton, Richmond county, adjoining the light-house depot, as it existed on February 19, 1880, and on the west side thereof, not exceeding two acres, for the purpose of such light-house depot.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 16; originally revised from L. 1880, ch. 15, § 1.

17. *In the city of Rochester.* A tract or tracts of land in the city of Rochester, not exceeding one acre, for the purpose of erecting a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 16; originally revised from L. 1882, ch. 245, § 1, pt.

18. *In the city of Syracuse.* A tract or tracts of land in the city of Syracuse, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 18; originally revised from L. 1882, ch. 245, § 1, pt.

19. *In the city of Poughkeepsie.* A tract or tracts of land in the city of Poughkeepsie, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 19; originally revised from L. 1882, ch. 245, § 1, pt.

20. *In the city of Troy.* A tract or tracts of land in the city of Troy, not exceeding one acre, for the erection of a government building thereon.

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Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 20; originally revised from L. 1885, ch. 96, § 1, pt.

21. *In the city of Auburn.* A tract or tracts of land in the city of Auburn, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 21; originally revised from L. 1885, ch. 96, § 1, pt.

22. *In the city of Hudson.* A tract or tracts of land in the city of Hudson, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 22; originally revised from L. 1886, ch. 93, § 1.

23. *In the city of Binghamton.* A tract or tracts of land in the city of Binghamton, not exceeding one acre, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 23; originally revised from L. 1887, ch. 91, § 1.

24. *At New Lots, Kings county.* A tract of land partly in the town of New Lots, Kings county, and partly in the town of Newtown, Queens county, containing fifteen and thirty-nine one-hundredths acres, for establishing a national cemetery.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 24; originally revised from L. 1884, ch. 74, § 1.

25. *In the city of Newburgh.* A tract or tracts of land in the city of Newburgh, Orange county, for the purpose of erecting and maintaining thereon a public building for the accommodation of the post-office and other government offices.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 25; originally revised from L. 1891, ch. 103, § 1.

26. *In the city of Watertown.* A tract or tracts of land in the city of Watertown not exceeding two acres, for the erection of a government building thereon.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 26; originally revised from L. 1889, ch. 336, § 1.

27. *At Mt. McGregor, Saratoga county.* A tract of land upon Mt. McGregor, in Saratoga county, described as follows: "Commencing at the northeast corner of the lot herein granted, upon which lot is located a cottage known as the 'Drexel' cottage, and at a point where an iron pin is driven into the ground, and running southerly on a line parallel with the easterly foundation of said cottage, and fifty feet distant therefrom, one hundred and forty-six feet to an iron pin driven into the ground at the southeast corner of said lot; thence westerly on a line parallel with the

southerly foundation of said cottage and fifty feet distant therefrom one hundred and thirty-one feet to an iron pin driven into the ground at the southwest corner of said lot; thence northerly on a line parallel with the westerly foundation of said cottage and fifty feet distant therefrom, one hundred and forty-six feet, to an iron pin driven into the ground at the northwest corner of said lot; thence easterly on a line parallel with the northerly foundation of said cottage and fifty feet distant therefrom, one hundred and thirty-one feet, to the place of beginning."

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 27; originally revised from L. 1886, ch. 47, § 1.

28. *On Long Island and Plumb island near Sheepshead bay.* One or more pieces of land, measuring in the aggregate not exceeding sixty acres, situate adjacent to and on the east side of the present military post of the United States at Fort Hamilton, Gravesend bay, New York, and more particularly described as follows: "Beginning at a point in the high-water line, where the eastern boundary line of the United States reservation at Fort Hamilton intersects said high-water line; running thence along said eastern boundary line north thirty degrees east one thousand eight hundred and ninety-eight and eight-tenths feet; thence south sixty-four degrees and fifty minutes east six hundred and fifty-nine and forty-five hundredths feet; thence south forty-four degrees and thirty-five minutes east one thousand one hundred and seventy feet; thence south forty-five degrees and twenty-five minutes west one thousand and one feet to the high-water line; thence along said high-water line to the point and place of beginning."

A piece of land on Plumb island near the eastern border of Sheepshead bay, New York, measuring fifty acres, more or less, taken from the eastern end of said island, more particularly described as follows: Beginning at a point on said island near the center thereof, which point is situated south seventy-nine degrees and twenty-three minutes west from the United States coast survey station on the eastern end of said island and is distant one thousand five hundred and twenty feet therefrom; running thence due south three hundred and fifty feet, more or less, to the high-water line of Sheepshead bay; thence eastward along the high-water line of Sheepshead bay two thousand eight hundred and sixty feet, more or less, to the extreme eastern end of the island; thence northwestwardly along the high-water line, following the meander of Broad creek, to a line running directly north and south through the point of beginning hereinbefore fixed and located, and thence due south to the said point of beginning, containing fifty acres, more or less. Upon the said lands so acquired near Fort Hamilton, and upon Plumb island, the United States may erect fortifications, barracks, wharves, and other structures for the defense of the southern or main entrance to New York harbor.

Source.—L. 1893, ch. 218, § 1.

29. *Town of Southfield, Richmond county, for fortification purposes.* Two parcels of land, containing in the aggregate about six and one-half acres, situate, lying and being adjacent to each other, near to and southwest from the military post of Fort Wadsworth, on Staten Island, in the town of Southfield, county of Richmond, and state of New York, as the same is described in the deed conveying said lands to the United States, recorded in Richmond county clerk's office, in liber two hundred and forty of deeds, page three hundred and seventy-four.

Source.—L. 1896, ch. 18, and L. 1903, ch. 35, § 1, pt.

30. *Adjacent to Fort Wadsworth.* All those certain tracts or parcels of land, situate, lying and being in the village of Edgewater, in the town of Southfield, in the county of Richmond, and state of New York, adjacent to the military reservation of Fort Wadsworth, on Staten Island, as follows, to wit: One certain tract of land, containing about fourteen acres, and the land and land under water lying in front thereof, and between ordinary high-water mark of New York bay and the pier and bulkhead line established by the United States, and four certain adjacent tracts of land, containing in the aggregate about eighty-two acres, and about four and eight hundred and fifty-five one-thousandths acres of land and land under water, lying in front of that portion thereof that borders on the shore of New York bay, and between ordinary high-water mark of said New York bay and the pier and bulkhead line established by the United States; and the United States may erect fortifications, barracks and other public buildings thereupon, for the defense of New York harbor.

Source.—L. 1893, ch. 628, § 1, part.

31. *On Ward's island, East river, New York county, for light-houses and fog signal station.* All that certain piece or parcel of land situated on Negro point, south part of Ward's island, Hell Gate, East river, in the city of New York, New York, particularly bounded and described as follows: "Beginning at a certain point distant seven feet and six inches from the outer edge of sea wall, marked 'A' on a plot survey made by William T. Rossell, engineer, third light-house district, November, nineteen hundred and one, where the angle included between the ranges to spire on center of main building male lunatic asylum on Ward's island and Hallett's point (Hell Gate) post light is one hundred and twenty-one degrees and forty-seven minutes, and the angle between the ranges to Hallett's point (Hell Gate) post light, and Presbyterian church is twenty-nine degrees and forty-eight minutes, and running thence a course north eleven degrees and fifty-four minutes east in the direction of spire on Ward's island, seventy-nine feet and six inches, thence south, eighty-four degrees and forty-two minutes west thirty-three feet and one inch, thence north eighty-nine degrees and fifty-four minutes west nineteen feet and five inches; thence north eighty-seven degrees and thirty-six minutes west thirty-four feet and seven inches; thence north eighty-two degrees and thirty minutes west sixty-two feet and

eleven inches, thence south eleven degrees and fifty-four minutes west, one hundred and one feet and three inches, until reaching the outer edge of sea wall; thence turning northeasterly, following said sea wall, about one hundred and fifty-four feet to a place opposite to the place of beginning, and thence running the first mentioned course seven feet and six inches to the point of beginning, with the right of way to and from said property."

Source.—L. 1902, ch. 386, § 1, as amended by L. 1903, ch. 639, and L. 1904, ch. 619.

32. *In the city of Buffalo, site for marine hospital.* A tract of land in the city of Buffalo, or in the county of Erie within ten miles of the boundaries of such city, to be used as a site for a marine hospital.

Source.—L. 1902, ch. 363, § 1.

33. *Esopus island in Hudson river, Dutchess county.* All the southerly part of Esopus island beginning at the southerly extremity and extending northerly to an east and west line across the neck of land connecting the two main portions of the island at its narrowest point at high-water, and the land shall be used only for the purpose of erecting thereon a light-house, beacons, light-house keepers' dwelling and works for improving navigation.

Source.—L. 1901, ch. 541, §§ 1, 3.

34. *Lands under water in New York harbor.* The lands under water in the harbor of New York, described as follows: "Beginning at a point on the exterior line or boundary of land under water in New York harbor, at Governor's island, granted to the United States of America by a patent dated May twenty-sixth, eighteen hundred and eighty, issued by the commissioners of the land office of the state of New York, pursuant to an act of the legislature of the state of New York passed May seventh, eighteen hundred and eighty, entitled 'An act relinquishing title and jurisdiction to the United States over certain lands covered with water in the harbor of New York at Governor's, Bedloe's, Ellis' and David's islands, and Forts Lafayette, Hamilton, Wadsworth and Schuyler,' which point is at the junction of the fourth and fifth lines of the description of said boundary; and extending thence south seventy degrees thirty-seven minutes west a distance of two thousand one hundred and fifty-nine feet; thence north forty-two degrees fifty-four minutes west a distance of thirteen hundred feet; thence north forty degrees twenty-seven minutes east a distance of two thousand one hundred and sixty-one feet to a point on the aforesaid boundary of said land under water granted to the United States of America by said patent as described above, being at the junction of the sixth and seventh lines of the description of said boundary; thence following respectively the sixth and fifth lines of said description by courses as follows: South eighteen degrees fifty-five minutes east a distance of fifteen hundred and sixty-five feet; thence south sixty-

eight degrees twenty-seven minutes east a distance of one thousand and eighty feet to the point of beginning; the bearings of lines herein described being referred to the same meridian as the bearings of the aforesaid description of land granted in eighteen hundred and eighty, which meridian has its north point two degrees thirty-five minutes west from the observed true north."

Source.—L. 1901, ch. 46, § 1.

35. *Lands under water in New York harbor.* The lands under water in the harbor of New York, described as follows: "Beginning at a point on the exterior line or boundary of land under water in New York harbor, at Governor's island, granted to the United States of America by a patent dated March seventh, nineteen hundred and one, issued by the commissioners of the land office of the state of New York, approved February twenty-seventh, nineteen hundred and one, entitled 'An act giving authority to the commissioners of the land office to grant and convey to the United States of America, certain lands under water in the harbor of New York at Governor's island, and to cede jurisdiction to the United States over said lands under water,' being chapter forty-six of the laws of nineteen hundred and one, which point is at the junction of the third and fourth lines of the description of said boundary; and extending thence south forty-three degrees thirty-two minutes west a distance of two thousand seven hundred thirty-two feet; thence south, three degrees fifty-nine minutes east a distance of seven hundred twenty feet; thence south sixty-seven degrees forty-four minutes east a distance of seven hundred seventy feet; thence north sixty-seven degrees eleven minutes east a distance of two thousand eight hundred sixty-three feet, to a point on the aforesaid boundary of said land under water granted to the United States of America by said patent as described above, being at the commencement of the first line or starting point, of the description of said boundary; thence following respectively the first, second and third lines of said description by courses as follows, namely: south seventy degrees thirty-seven minutes west a distance of two thousand one hundred fifty-nine feet; thence north forty-two degrees fifty-four minutes west a distance of one thousand three hundred feet; thence north forty degrees twenty-seven minutes east a distance of two thousand one hundred sixty-one feet to the point of beginning; the bearings of lines herein described being referred to the same meridian as the bearings of the aforesaid description of land granted in nineteen hundred and one, which meridian has its north point two degrees thirty-five minutes west from the observed true north."

Source.—L. 1903, ch. 18, § 1.

36. *Water supply at West Point.* Any lands or water, or any rights or easements in lands or water in the town of Highlands, county of Orange and state of New York, at or adjacent to Popolopen creek in said county deemed necessary for the purpose of increasing the water supply for domes-

tic and other uses to and for the government reservation and military academy at West Point, New York, and consent is also given to the acquisition by the United States of America of lands and water and rights in lands and water needed for the erection of any buildings or structures necessary to carry out such purposes and for the construction and maintenance of a pipe line or other conduits adequate to carry such water supply from the reservoirs erected or to be erected by the United States of America, upon the lands acquired by it for the purposes aforesaid to the said United States reservation at West Point, New York.

Source.—L. 1905, ch. 15, § 1, as amended by L. 1905, ch. 82.

37. *Constitution island, Putnam county.* All that tract of land lying east of the easterly bank of the Hudson river and west of the westerly line or side of the New York Central and Hudson River railroad company's land situate in the county of Putnam and state of New York, and formerly known as East Point, and now commonly known as Constitution island, lying opposite to the West Point military reservation.

Source.—L. 1900, ch. 308, § 1.

38. *In county of Rockland.* All that tract or parcel of land in the county of Rockland and state of New York, bounded and described as follows: "Beginning at a point in the west line of the boulevard, so called, where the same intersects the boundary line between the states of New York and New Jersey, and running thence northerly to a monument marked number six, on the map of Palisades, by J. H. Serviss, dated eighteen hundred and seventy-four, said map being on file at New City, in the county of Rockland and state of New York; thence eastwardly on a straight line to the high-water line in the Hudson river at a point seven hundred feet south of the south line of the patent to George Lockhart, dated February twentieth, sixteen hundred and eighty-five, and thence in a southerly direction along the said high-water line to the boundary line between the states of New York and New Jersey; thence westerly along said boundary line to the point or place of beginning. And also all lands, docks, piers, bulkheads and buildings; water and lands under water; right of navigation and dockage and riparian rights; and all rights, titles and forfeitures of, in or to the same; pertaining to said tract, or in front of, or between the same and the center of the Hudson river."

And it is hereby provided that the United States may hold and use said tract or any part thereof for the purpose of preserving, securing and employing the same for military, naval and other purposes, as may be required, the same to be applied from time to time to such of said purposes as may be designated; and the United States may erect fortifications and other public buildings and lay out and maintain roads, drill grounds and other open spaces thereon, and build docks, piers, bulkheads and wharves and do any and all things necessary or convenient for the purposes aforesaid.

Source.—L. 1896, ch. 15, § 1.

39. *In Queens county*, for range lights for entering Cold Spring harbor. Two sites not exceeding five acres each for the establishment of range lights for entering Cold Spring harbor, Queens county.

Source.—L. 1880, ch. 29, § 1.

§ 26. Cession during ownership by the United States and use for public purposes, with reservation of right to serve process.—Title and jurisdiction to the following tracts or parcels of land have been ceded to the United States by this state, upon condition that the jurisdiction so ceded should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as the land shall remain the property of the United States and be used for public purposes:

1. *In Cold Spring harbor, Queens county.* A tract of land under water in Cold Spring harbor, Queens county, comprised within a circle two hundred feet in diameter, or less than one acre of surface, acquired for a site for a light-house at the middle ground in said harbor.

Source.—Former State L. (L. 1892, ch. 678) § 26, subd. 1; originally revised from L. 1875, ch. 502, § 1.

2. *On Staten Island.* A tract or tracts of land on Staten Island, being such portions of the Marine Hospital grounds as have been conveyed to the United States by the commissioners of the land office for light-house and other purposes.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 2; originally revised from L. 1865, ch. 689, § 1.

3. *At sundry places for light-house purposes.* Certain tracts of land, and land under water, from time to time deeded to the United States, and occupied for the construction and maintenance of light-houses and keepers' dwellings, sketches and descriptions of which were filed in the office of the secretary of the state, on or before April 20, 1874, as follows:

No. 1. Split Rock, Lake Champlain, Essex county, New York, containing five acres, two quarters and six perches, conveyed to the United States by deed dated the fifteenth day of July, 1837.

No. 2. Stuyvesant, county of Columbia, New York, containing five acres conveyed to the United States by deed dated August thirteenth, 1828.

No. 3. Coxsackie, county of Greene, New York, containing five acres, conveyed to the United States by deed dated the third day of August, 1828.

No. 4. Four Mile Point, town of Coxsackie, county of Greene, New York, containing two acres, two roods and twenty-five rods, conveyed to the United States by deed dated the twelfth day of February, 1831.

No. 5. Cedar-Island light, Gardiner's bay, town of Easthampton, county

of Suffolk, New York, conveyed to the United States by deed dated the twentieth of August, 1838.

Also, the lands lying under water, and known as submarine sites, sketches and maps of which, by metes and bounds, have been furnished by the United States and were filed in the office of the secretary of state, on the twentieth day of April, 1874, viz.:

No. 6. Hart's island, situated in Long Island sound, Westchester county, New York, at the south end of Hart island, under water and beyond low water mark, containing three acres and seventy-five hundredths of an acre.

No. 7. Execution Rocks, Long Island sound, one hundred feet in diameter, containing less than an acre, situated seven-eighths of one mile north of Sands Point light, and five miles to the northeast of Fort Schuyler.

No. 8. Robin's Reef, New York harbor, containing an area of less than one acre.

No. 9. Long-beach bar, entrance to Greenport harbor, Long Island, Suffolk county, New York, containing an area of less than one acre.

No. 10. Stratford shoal, Long Island sound, New York, containing an area of less than one acre.

No. 11. Race Rock, off Fisher's Island point, at the western entrance to Fisher's Island sound, Suffolk county, New York, containing an area of less than one acre.

No. 12. Hudson city, middle ground, Hudson river, opposite the city of Hudson, county of Columbia, New York, containing an area of less than one acre.

No. 13. Saugerties, on the mud flat on the north side of entrance to Saugerties creek, county of Ulster, New York, containing an area of less than one acre.

No. 14. Roah Hook, on the west side of the Hudson river, behind the angle of the dyke, south of Roah Hook, New York, containing an area of less than one acre.

No. 15. Parada Hook, on a point of rocks, lower end of dyke, on west side of the Hudson river, New York, containing an area of less than one acre.

No. 16. Nine-mile tree, Castleton, behind the center of dyke, on the east side of the Hudson river, New York, containing an area of less than one acre.

No. 17. Cross-over dyke, on north end of stone dyke below Albany, on the west side of the Hudson river, New York, containing an area of less than one acre.

No. 18. Cuylers' dyke, on the east side of the Hudson river, on the lower or south end of dyke, near Albany, New York, containing an area of less than one acre.

No. 19. Van Wie's point, on the south end of the stone dykes below Albany, New York, on the west side of the Hudson river, containing an area of less than one acre.

No. 20. Potter's or Sea-flower reef, Fisher's Island sound, Suffolk

county, New York, about one and a half miles north of Fisher's island, containing an area of less than one acre.

No. 21. Sand spit entrance to Sag Harbor, Suffolk county, Long Island sound, New York, containing an area of less than one acre.

No. 22. Branford reef, abreast of Branford harbor, Long Island sound, New York, containing an area of less than one acre.

No. 23. Romer shoal, off Sandy Hook, entrance to New York harbor, containing an area of less than one acre.

No. 24. Oyster Point, Plumb Gut entrance to Gardiner's bay, Long Island sound, Suffolk county, New York, containing an area of less than one acre.

No. 25. The Stepping Stones, about one mile south of Hart island, Long Island sound, New York, containing an area of less than one acre.

No. 26. Mill reef, opposite New Brighton, in the Kill von Kull, Richmond county, New York, containing an area of less than one acre.

Source.—Former State L. (L. 1892, ch. 678) § 25, subd. 3; originally revised from L. 1874, ch. 432.

§ 27. Authorization of acquisition by the United States, and cession of jurisdiction thereupon during ownership by the United States and use for public purposes, with reservation of right to serve process.—The United States has been authorized to acquire the following tracts or parcels of land, and jurisdiction thereof has been ceded to the United States upon such acquisition, on condition that such jurisdiction should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state of New York, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States, so long only as the land shall remain the property of the United States and be used for public purposes.

1. *In the city of New York.* A tract of land in the city of New York, fronting on Wall street, and occupied on February 7, 1857, by the United States as an assay office; and also the property north of the same, fronting on Pine street, and also the property adjoining said Pine street property on the east, and occupied by the United States, for revenue purposes, on February 7, 1857, as offices for the surveyor for the port of New York, and also that piece or parcel of land bounded by Park row, Beekman and Nassau streets, for the purpose of a post-office.

Source.—Former State L. (L. 1892, ch. 678) § 26, subd. 4; originally revised from L. 1857, ch. 19, § 1.

2. *In the city of New York.* A tract or tracts of land in the city of New York, and not exceeding in area fifty thousand square feet, for a site for a post-office.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 2; originally revised from L. 1857, ch. 762, and L. 1861, ch. 118.

3. *In the city of New York.* A tract of land in the city of New York, situated in the first ward of the city of New York, and constituting the entire square formed by Wall, William and Hanover streets, and Exchange place, and the Exchange building and improvements erected thereon, covering the whole of said square, for the purpose of a custom-house.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 3; originally revised from L. 1865, ch. 523, § 1.

4. *In the city of New York.* A tract of land in the city of New York being so much of land belonging to the corporation of such city, and immediately adjoining the northerly side or boundary of the land conveyed to the United States prior to January 1, 1879, by the mayor, aldermen and commonalty of the city of New York, for a site for a post-office, as is now covered by two sidewalks, each 103 feet and six inches in length, by nineteen feet two inches in width, with a paved passage-way, between eleven feet and eleven inches in width, making a total area of 218 feet and eleven inches in length, by nineteen feet and two inches in width.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 4; originally revised from L. 1879, ch. 33, § 1.

5. *In the city of New York.* A tract or tracts of land in the city of New York, not exceeding in area two hundred thousand square feet, for the purpose of an appraiser's warehouse and other purposes.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 5; originally revised from L. 1889, ch. 129.

6. *In the city of Brooklyn.* Certain tracts of lands in the city of Brooklyn described as follows: Six lots of land with the warehouses thereon erected, in the sixth ward of the city of Brooklyn, on the south pier of the property of the Atlantic Dock Company, known as lots Nos. 53, 54, 55, 56, 57 and 58, on the said south pier of the Atlantic Dock Company, on a certain map inscribed "map of property in the sixth ward of the city of Brooklyn, port of New York, belonging to the Atlantic Dock Company, surveyed September, eighteen hundred and forty-one, by Willard Day city surveyor," said lots each being twenty-five feet front and rear, and one hundred feet deep on each side, for revenue purposes.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 6; originally revised from L. 1857, ch. 19.

7. *In the city of Brooklyn.* A tract or tracts of land in the city of Brooklyn, for a site for a post-office.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 7; originally revised from L. 1883, ch. 385.

8. *At Hallett's point, Queens county.* A tract or tracts of land at Hallett's point, Hell Gate, in Queens county, described as follows: Beginning at a point in the westerly line of lot number eighty-nine, and situated one hundred feet from the westerly side of Monson street, if the

same were extended, which point is three feet six inches distant from the southwest corner of said lot number eighty-nine, and running thence northwesterly, at right angles to said Monson street, 154 feet, to low water of the East river; thence along low water line with a course about north, seventy-eight degrees east, about 210 feet to a point in the prolongation of the said westerly side of Monson street, if the same were extended; thence southwesterly parallel to the westerly side of Monson street and in a line one hundred feet distant therefrom, about one hundred and forty feet to the point or place of beginning. The said last mentioned line or boundary being coincident with the easterly side of the concrete foundations built for the electric tower at Hallett's point, for the purpose of establishing thereon light-houses or other aids to navigation.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 8; originally revised from L. 1884, ch. 11.

9. *At Coney Island, Kings county.* Two certain tracts of land at Coney Island, Kings county, the first being described as follows: Beginning at a point where the angle included between the ranges to Centennial Tower and Romer Shoal light-house shall be $87^{\circ} 40'$; the angle between Romer Shoal and Elm Tree light-house, $77^{\circ} 34'$; and the angle between Elm Tree and Fort Tompkins light-house shall be $49^{\circ} 49'$, and running thence N. 60° E., 150 feet; thence N. 30° W., 100 feet, thence S. 60° W., to the Atlantic ocean; thence along the Atlantic ocean to the point of intersection of the same with the prolongation of the first mentioned course; thence N. 60° E., to the place of beginning. The second being described as follows: Beginning at a point of intersection of the range between A. and B. and the division line of lots forty-four and forty-five, and running thence N. 12° E., 25 feet; thence S. 78° E., 25 feet; thence S. 12° W., to the Atlantic ocean; thence along the Atlantic ocean to the point of intersection of the same with division line of lots forty-four and forty-five; thence along division line north twelve degrees east, to a point of beginning; for the purpose of erecting thereon light-houses and fog signals.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 9; originally revised from L. 1889, ch. 268.

10. *At Staten Island, Richmond county.* A tract of land at Staten Island, Richmond county, described as follows: Beginning at a point on the farm of George W. Vanderbilt, lying east of New Dorp lane, distant on a straight line drawn from the north corner of the Elm Tree light-house reservation, on a course N. $54^{\circ} 30'$ E., 206 feet and six inches from said corner, which is formed by the intersection of the southwesterly line of New Dorp lane with the northwesterly line of The Elm Tree light-house reservation; thence running from said point on the farm aforesaid, N. 42° E., 50 feet; thence S. 48° E., 50 feet; thence S. 42° W., 50 feet; thence N. 48° W., 50 feet to the point or place of beginning, being a plot fifty feet

square; together with a right of way from the plot so conveyed to the north-easterly line of the New Dorp lane over a strip of land ten feet in width, and having as its northerly boundary the line or course of two hundred and six feet and six inches first above set forth; the courses above given being in accordance with the magnetic meridian of June, eighteen hundred and ninety, for the purpose of erecting a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 10; originally revised from L. 1891, ch. 183, § 1.

11. *West Troy, Albany county.* Two certain tracts of land at West Troy, town of Watervliet, Albany county, the first being described as follows: Commencing at a point on the east bank of the Erie canal, and which is the southwest corner of lands conveyed by Albert G. Sage to the United States, by deed bearing date the seventeenth day of April, eighteen hundred and fifty-nine, and runs thence easterly along the southerly line of said lands so conveyed by said Sage as aforesaid, about two hundred and fifty-eight feet to the west side of the alley next west of River street or Broadway; thence southerly along the west line of said alley and said line extended, about 300 feet and six inches; thence westerly along the south line of the Gibbons property, so called, about one hundred and ninety-three feet to the east bank of the Erie canal, and thence northerly along said east bank of said Erie canal, 346 feet, more or less, to the place of beginning. The second being described as follows: Commencing at a point on River street or Broadway, and being the southeasterly corner of the arsenal grounds, as possessed and occupied by the United States prior to the year eighteen hundred and fifty-nine, and runs thence southerly along the west line of said River street or Broadway about three hundred and twenty feet to the north line of lot number sixty-two, as laid down on the original map of Gibbonsville; and runs thence westerly along the north line of said lot number sixty-two and said line extended to the west line of the alley next west of said River street or Broadway; thence northerly along the west line of said alley about three hundred and twenty feet to the southerly line of the arsenal grounds, as possessed and occupied by the United States prior to the year eighteen hundred and fifty-nine; and thence easterly along the southerly line of the said arsenal grounds to the place of beginning.

Source.—Former State L. (L. 1892, ch. 678) § 27, subd. 11; originally revised from L. 1867, ch. 186, § 1.

12. *In the city of New York as a site for a marine hospital.* “All that certain piece or parcel of land situate, lying and being in the second ward of the borough of Richmond, formerly town of Middletown, in the city of New York, in the county of Richmond, and state of New York, with the buildings and improvements thereon, bounded and described as follows, to wit: Beginning at a point on the westerly side of Bay street where the same is intersected by the southerly boundary line of the land formerly

belonging to John Gore, and running thence along Bay street south twenty-nine degrees eleven minutes and thirty seconds east two hundred and seventy-two and seventy-one one-hundredths feet; thence still along Bay street south twenty-seven degrees twenty-three minutes and ten seconds east two hundred and fifteen and fifty-nine one-hundredths feet, more or less, to a point distant thirty feet from the intersection of the said Bay street by the northerly or boundary line of land of George Vanderbilt; thence south seventy-nine degrees twelve minutes and twenty seconds west on a line parallel with said northerly boundary of Vanderbilt's land and distant thirty feet therefrom one thousand and two and eighty-five one-hundredths feet; thence north ten degrees forty-four minutes and twenty seconds west four hundred and forty-six and ten one-hundredths feet, more or less, to said southerly boundary line of land formerly of John Gore; and thence north seventy-seven degrees fifty-four minutes and fifty seconds east along said land formerly of John Gore eight hundred and fifty-five feet to the point or place of beginning. Containing nine and seven hundred and fifty-five thousandths acres more or less"; and also all the right, title and interest of the present owners in and to said Bay street in front of and adjoining said premises above described.

Source.—L. 1903, ch. 107, § 1.

13. *Hart's Island, Long Island sound.* All that piece or parcel of land at Hart's Island, in Westchester county, bounded and described as follows: A tract of land at the southeast end of Hart's Island, situate in Long Island sound, Westchester county and state of New York, containing about one-half acre, more or less, about twenty thousand four hundred and sixty square feet and comprising all the land to the eastward of the line A B, as shown on a map of said Hart's Island which is to be filed in the office of the secretary of state of this state, the said line making an angle of twenty-nine degrees and forty-five minutes to the eastward of the true north meridian, and being located at one hundred and thirty-two feet from the low water mark at the extreme easterly end of Hart's Island as taken from the aforesaid map, distance measured at right angles to the said line A B, and the said property being substantially one hundred and thirty-two feet in depth from eastward to westward and two hundred and fifty feet in width from northward to southward—distances being taken from the low water line shown on said map.

Source.—L. 1900, ch. 699, § 1.

§ 28. Cession during use for purposes thereof, with reservation of right to serve process.—Title and jurisdiction to the following tracts or parcels of land have been ceded to the United States by this state, on condition that the jurisdiction so ceded should not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only

as the land shall be used and occupied for the purposes of cession, unless the consent of the state to a different use has been granted.

1. *In the city of New York.* A tract or tracts of land, and land under water in the city of New York, not exceeding two hundred and fifty feet, being a portion of the eastern end or extremity of the lands and lands under water, formerly known as the Battery extension, including the open slip or basin at the easterly end thereof, together with a right of way or passage not less than seventy-five feet in width, from such lands over and across the lands adjacent thereto, known as the Battery ground, which the mayor, aldermen and commonalty of the city of New York have been authorized to convey to the United States, acquired for the purpose of erecting and establishing a barge office and other suitable buildings and structures for the transaction of the public business connected with the United States revenue service, and for the landing of revenue and other government boats and barges, for the use, accommodation and convenience of the United States custom-house for the port of New York, the title of this state in which the commissioners of the land office have been directed to convey.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 1; originally revised from L. 1886, ch. 862.

2. *In Kings county.* Two certain tracts of land in Kings county, described as follows: All that certain tract, piece or parcel of upland, salt meadow and marsh, bounded as follows: Beginning at the corner of the Wallabout bridge road, and the road leading to Williamsburgh, and running from thence westerly along the bridge road and land of John Ryerson, to a corner; thence westerly along the land of John Ryerson, to a corner; thence westerly along the same and a small creek in the meadow, to the Wallabout bay; thence northerly by the said Wallabout bay, to the Wallabout creek; thence easterly by the creek aforesaid to the south corner of the dock; thence westerly by land of Ida Schenck and the dock, including the road sixty feet (the road to be for the use of the parties interested in the dock and landing); thence 140 feet to the road leading from Williamsburgh to a corner eighty-eight feet from the creek; thence along said road southerly to the place of beginning, excepting and reserving to Francis Skillman, his heirs and assigns, one undivided half of the dock, and a privilege of a landing at the dock for the owner or occupant of the farm adjoining the herein described premises, lately sold to Charles Bostwick, esquire. Also, all that certain piece of land and meadow on the easterly side of the road to Williamsburgh, beginning against the road at the bridge, and running from thence easterly and southerly by the Wallabout creek to a stake at the said creek; thence westerly to a notched post against the road; thence northerly along the road to the place of beginning, altogether in upland, salt meadow and marsh about thirty-three acres, according to a survey and map of the said lands, made by

Jeremiah Lott, in the month of April, 1824. The tracts of land, the jurisdiction whereof is hereby ceded, being the same which were, by an indenture bearing the date the 1st day of July, 1824, conveyed by Sarah Schenck, widow of Martin Schenck, Jane Schenck, widow of Jeromus Schenck, Jacob Harris and Ida his wife, and Isaac Harris and Mary Ann his wife, all of the county of Kings, and state of New York, to the secretary of the navy, the secretary of the treasury, and the secretary of war, for the time being, commissioners of navy hospitals, and to their successors and assigns forever. These cessions were made for the purpose of erecting and maintaining a navy hospital and other necessary edifices and buildings.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 2; originally revised from L. 1833, ch. 181.

3. *At Prince's bay, Richmond county.* A tract containing about eight acres and three-quarters of an acre of land, situated at Prince's bay, in the town of Westfield and county of Richmond, and bounded as follows: Easterly and southerly by the bay at high water mark, as patented to the original proprietors; westerly by Richard Lafourge's land; and northerly by land belonging to the estate of Israel R. Dissosway, deceased; being part of the estate whereof he died seized, acquired for the purpose of erecting a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 3; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 28.

4. *On Staten Island.* A tract of land not exceeding one acre in extent, on the lands belonging to the state, on and near the southeastern point or projection of Staten Island; to be laid out in such a manner as not to interfere with the appropriate uses of the military grounds of Fort Tompkins; acquired for the purpose of erecting a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 4; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 29.

5. *In Raritan bay.* A tract of land under water in Raritan bay, described as follows: The site is on the edge, or southeastern extremity of the shoal known as the Great Beds, which makes out from the New Jersey shore at the intersection of the Raritan river and Perth Amboy channels, and is embraced within a circle seven hundred feet in diameter, the center point of which is distant three-fourths of a mile in a course south twenty-two degrees west from the southwest gable of the dwelling-house of B. C. Butler, at Ward's point, on the southerly shore of Staten Island, and contains 8.83 of an acre in area, as shown on a map and description which have been filed in the office of the secretary of state of this state, acquired for the purpose of erecting a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 5; originally revised from L. 1880, ch. 69.

6. *In Fisher's Island sound.* A tract of land under water in Fisher's Island sound, described as follows: The area embraced within a circle seven hundred feet in diameter, the center of which shall be the spindle that marked the site of "Latimer's reef" on January first, 1883, acquired for the purpose of erecting a light-house thereon.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 6; originally revised from L. 1883, ch. 128.

7. *At Gardiner's island, Suffolk county.* A tract of land on Gardiner's island, Suffolk county, described as follows: All that part of the north point of Gardiner's island aforesaid, lying northwest of a line described, and running as follows, to wit: Starting from a stake on a sand ridge, and running thence N. 56° E., and S. 56° W., to the waters on each side of the said point or beach respectively, and bounded northerly, easterly and westerly by the waters of Gardiner's bay, and southeasterly by the beach at the aforesaid line, containing about fourteen acres more or less, acquired for the purpose of erecting and maintaining thereon a light-house and other necessary buildings.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 7; originally revised from L. 1852, ch. 32.

8. *At Rye, Westchester county.* A tract of land in the town of Rye, Westchester county, on Captain's island, described as follows: Beginning at a marked rock, near a rock called Lightning rock, and running on the southern and eastern shore N. 75° 30' E., 63 links; thence N. 41° E., 3 chains 40 links; thence N. 84° 45' E., one chain 88 links; thence N. 89° E., 3 chains 80 links; thence N. 27° 45' E., 3 chains 53 links; thence N. 54° W., 71 links to a stone bound by the bank at high water mark; thence west, crossing the island to the pond where a stone bound is erected at high water mark, thence running by the southeast side of the pond, S. 40° W., 75 links; thence S. 52° 15' W., one chain 92 links; thence N. 52° 45' W., 74 links; thence S. 13° 30' W., 2 chains 78 links; thence S. 49° W., 80 links, to a pine stump by the side of the pond; thence S. 19° W., one chain nine links, across a point of land to the place of beginning, but not to contain any part of the pond, acquired for the purpose of erecting and maintaining thereon a light-house and other necessary buildings.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 8; originally revised from L. 1831, ch. 289.

9. *At Watervliet, Albany county.* A tract of land in the town of Watervliet, Albany county, described as follows: Beginning at an elm tree standing on the west bank of the Hudson river, in the village of Gibbonsville, thence running, by the magnetic meridian in 1828, N. 68° W., 18 chains and seventeen links, to a stone in the ground marked U. S. No. 6; thence S. 22° W., 10 chains and 76 links, to a stone in the ground, marked U. S. No. 7; thence N. 68° W., 12 chains 81 links, to a stone in the

ground, marked U. S. No. 2, at the south side of a new road called the Shaker road; thence along the said road S. 72° W., 4 chains and twenty-nine links, to a stone in the ground, marked U. S. No. 3, also on the south side of said road; thence S. 22° W., 6 chains and thirty-four links to a stone in the ground, marked U. S. No. 4; thence S. 68° E., 35 chains and eighty links, to the west shore of the Hudson river at low water mark; thence up the said stream, along low water mark, till the place of beginning bears N. 68° W., thence from the low water mark N. 68° W., to the place of beginning, together with all the land under water lying opposite and easterly of the described premises, which has been heretofore granted by letters patent to James Gibbons, by the people of the state of New York; the evidences of the several purchases of the land which is hereby ceded, being recorded in the office of the clerk of the county of Albany; but always excepting and reserving out of the lands above described, the land occupied by the Erie canal, one rod on each side thereof, and also the public highway, acquired for the purpose of erecting and maintaining thereon arsenals, magazines, dock yards and other necessary buildings.

Source.—Former State L. (L. 1892, ch. 678) § 28, subd. 9; originally revised from L. 1830, ch. 322.

10. *In towns of Theresa and Antwerp, Jefferson county, for fish hatchery.* Such lands and the rights of way thereto in the towns of Theresa and Antwerp, Jefferson county, as said United States may need, require and secure for the purposes of a United States fish hatchery, and the land under the waters of Moon lake in said towns and county, and of the creeks and their water running into and from said lake, and of the lands bordering on said lake and creeks one hundred feet back from high water mark on the shore of said lake, and one hundred feet each side of the said creeks from their center. And jurisdiction is also further ceded to said government of such lands in said towns as may contain springs which it may secure for the purposes of furnishing water for such hatchery; the total amount of land over which jurisdiction is hereby ceded shall not exceed one thousand acres, exclusive of the land under the waters of said lake, and such jurisdiction shall continue so long as said government shall operate and maintain a fish hatchery in the said towns and no longer; and provided at all times civil and criminal processes of the New York state courts may be served on said lands.

Source.—Former L. 1892, ch. 157, § 1.

§ 29. *Authorization of acquisition and cession of jurisdiction thereupon, during use for purposes thereof, with reservation of right to serve process.*—The United States has been authorized to acquire the following tracts or parcels of land, and jurisdiction thereof has been ceded to the United States upon such acquisition on condition that the jurisdiction so ceded should not prevent the execution thereon of any process, civil or criminal,

issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as the land shall be used and occupied for the purposes of cession, unless the consent of the state to a different use has been granted.

1. *In the city of Brooklyn.* A tract or tracts of land in and adjacent to the city of Brooklyn, described as follows: Commencing at the stone monument, No. 1, at the corner of Flushing avenue and the Williamsburgh road; thence S. $82^{\circ} 25'$ W., 599 $\frac{3}{12}$ feet to stone monument No. 2; thence N. $82^{\circ} 30'$ W., along Flushing avenue, 4,152 feet $6\frac{3}{4}$ inches to stone monument No. 3; thence N. $7^{\circ} 16'$ E., along Navy street, 903 feet to the point J; thence N. $25^{\circ} 39'$ W., 479 $\frac{4}{12}$ feet to point K; thence N. $40^{\circ} 47'$ E., 1,357 $\frac{7}{12}$ feet to the point L; thence northeastwardly until it intersects the continuation of the Williamsburgh line at the point M, at the distance of 130 feet from the block; thence eastwardly by and with the said continuation of the Williamsburgh line to the center of the channel at the point N; thence along the center of the channel to the point O, at the intersection of the line A B, continued; thence S. $57^{\circ} 30'$ E., to the point A, equidistant between two piles, driven at low water mark; thence S. $57^{\circ} 30'$ E., 991 $\frac{3}{12}$ feet to the point B; thence S. 42° E., 1,025 feet to the point C; thence S. $35^{\circ} 30'$ E., 200 feet to the point D; thence S. 29° E., 271 $\frac{4}{12}$ feet to the point E; thence S. 4° E., 189 $\frac{3}{12}$ feet to the point F; thence S. $34^{\circ} 30'$ W., 93 feet to the point G, in the center of the Wallabout creek; thence along the center of said creek to the point H; thence S. 68° W., 244 feet to the point I; thence S. $0^{\circ} 55'$ E., 219 $\frac{5}{12}$ feet to the commencement, at the monument No. 1; provided, nevertheless, that the city of Brooklyn shall not be deprived of any vested rights in and over Vanderbilt and Clinton avenues, as now laid out and graded, or the rights of sewerage which the said city may now possess over the property lying between the Naval Hospital grounds and the easterly boundary of the present navy yard.

The free, common and unrestricted use and navigation of the waters and channels of the Wallabout bay, from the westerly line of Vanderbilt avenue in front thereof, and extending therefrom easterly and northerly to the East river, is hereby reserved to the people of this state; and the United States shall not in any way or manner injure, affect or obstruct the free and entire use and navigation of the said channel, or the landing places or wharves at the foot of, or where Clinton and Vanderbilt avenues, or either of them, reach or may extend to the said channel. Such acquisition has been authorized for the purpose of a navy yard and naval hospital, according to the plan furnished by the naval department.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 11; originally revised from L. 1853, ch. 355. Consent was given to close Wallabout channel by L. 1893, ch. 668. See also L. 1892, ch. 319, and act of Congress, Dec. 22, 1892, authorizing sale of United States lands to city of Brooklyn.

2. *On Staten Island.* A tract of land on Staten Island, Richmond county, owned by William H. Aspinwall, lying mainly between the lands of the United States and New York avenue, for the purpose of building and maintaining forts, magazines, arsenals and other necessary structures.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 11; originally revised from L. 1857, ch. 604, § 2.

3. *On Long Island.* A tract or tracts of land on Long Island, Queens county, in a direction opposite Fort Schuyler, East river (and concurrent jurisdiction over all the shores, flats and waters contiguous to such lands, within 400 feet from low water mark, measured toward the channel, and over the land lying between high and low water marks), for the purpose of building and maintaining forts, magazines, dock-yards, wharves and other necessary structures and appendages.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 3; originally revised from L. 1857, ch. 604, § 1, as amended by L. 1875, ch. 114.

4. *On Long Island and Staten Island.* A tract of tracts of land adjacent to Fort Hamilton, Kings county, and adjacent to Fort Tompkins in the town of Southfield, Staten Island, not exceeding 150 acres together with all the shores, flats and waters within 400 yards from low water mark, contiguous to such lands; for the purpose of erecting and maintaining thereon batteries, forts, magazines, wharves and other necessary structures with their appendages.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 4; originally revised from L. 1861, ch. 313, § 7, as amended by L. 1862, ch. 12.

5. *In Hudson river.* Certain tracts of land under water in the Hudson river, for the purpose of erecting light-houses, beacon lights, range lights, or other aids to navigation, and light keepers' dwellings, and which the commissioners of the land office have been authorized to convey.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 5; originally revised from L. 1884, ch. 273.

6. *At sundry places for light-house purposes.* Certain tracts of land in or near the Hudson river, for the purpose of the construction and maintenance of light-houses and keepers' dwellings, as follows:

1. For a beacon light on the eastern shore of the river near the lower end of Fish House bar.

2. For a beacon light on a dike above Fish House bar.

3. For a beacon light on the southern part of an island near Round shore.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 6; originally revised from L. 1861, ch. 313, § 6.

7. *At Danskamer point, near Orange county.* A tract of land not exceeding one acre, situate at Danskamer point, on the western side of the

Hudson river, at a point near the northern boundary of Orange county; and also a tract of land not exceeding 25 feet square, situate at the Narrow channel, on the west side of the Hudson river, in Greene county, distant about three-fourths of a mile due north of the Four-Mile point light-house, for the purpose of establishing and maintaining light-houses, fog signals or other aids to navigation.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 7; originally revised from L. 1883, ch. 223.

8. *Near Tarrytown.* A tract of land under water in the Hudson river, in the vicinity of Tarrytown point, for the purpose of erecting a beacon light thereon, when the site thereof shall have been selected and approved by the commissioners of the land office and a description thereof filed in the office of the secretary of state.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 8; originally revised from L. 1849, ch. 390.

9. *Sister islands, St. Lawrence county.* Certain tracts of land in St. Lawrence county, known and designated as the "Sister islands," being two islands situated near the most easterly point of Grenadier island, in Canada, for a site for a light-house and to be acquired by the United States before January 1, 1862.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 9; originally revised from 1861, ch. 313, § 1.

10. *At Ogdensburgh, St. Lawrence county.* A tract of land in Ogdensburgh, St. Lawrence county, described as follows: That part of block No. 45, which block is bounded by State, Green, Water and Knox streets, between Knox street and a line drawn across said block from State to Water street, parallel with Knox street, and distant therefrom 145 feet 7 inches, and being 117 feet and 7 inches on Knox street, and 145 feet and 7 inches on State street, for the purpose of a custom-house and post-office with court-rooms.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 10; originally revised from L. 1857, ch. 39, § 1.

11. *At Hounsfield, Jefferson county.* A tract of land known as Horse island, in the town of Hounsfield, Jefferson county, for the purpose of erecting and maintaining a light-house and other buildings connected therewith.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 11; originally revised from L. 1831, ch. 289, § 1.

12. *Near outlet of Lake Champlain.* A tract of land near the outlet of Lake Champlain for a site for a fort, and which the commissioners of the land office have been authorized to convey accordingly.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 12; originally revised from L. 1840, ch. 155, § 2.

13. *Near mouth of Oswego river.* A tract of land near the mouth of the Oswego river, Oswego county, known as the old fort, military and parade ground, for the purpose of re-establishing the military post, or rebuilding the fort, redoubts and barracks, of improving the parade grounds, and of the erection of a marine hospital, and which the commissioners of the land office have been authorized to convey accordingly. Any right, title or privilege granted by the United States to any railroad company to cross or occupy any portion of such lands, shall not be deemed a use contrary to the purposes of the cession thereof.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 13; originally revised from L. 1839, ch. 232; L. 1849, ch. 288; L. 1870, ch. 70.

14. *In the city of Buffalo.* A tract or tracts of land in the city of Buffalo, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings deemed necessary for the protection and defense of such city.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 14; originally revised from L. 1862, ch. 253, § 1.

15. *In Buffalo.* A tract or tracts of land adjacent to, or in the vicinity of, the lands owned by the United States, and occupied on January 1, 1842, by the light-house in the city of Buffalo; for the purpose of erecting a fort, battery or other military works thereon, and which the commissioners of the land office have been authorized to convey accordingly.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 15; originally revised from L. 1842, ch. 57, § 1.

16. *At Black Rock, Erie county.* Certain tracts of land in the south village of Black Rock, between Lake street or Broadway and the easterly line of the Buffalo and Black Rock railroad, or north of block 133, and between the Erie canal and Black Rock harbor, or lands adjacent thereto, reserving a free and uninterrupted use and control in the canal commissioners of all that may be necessary for canal and harbor purposes; for the purpose of erecting and establishing a fort, battery, barracks, parade ground or military post, and which the commissioners of the land office have been authorized to convey accordingly.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 16; originally revised from L. 1840, ch. 155, § 1.

17. *At Black Rock and Buffalo.* A tract of land in the south village of Black Rock, Erie county, described as follows: Beginning at the northeast corner of Connecticut street and the Buffalo and Black Rock railroad, thence first in a northwesterly and next in a northerly direction along the easterly side of said railroad, to a short street leading from said railroad to Massachusetts street; thence along the south side of said short street to Broadway; thence along the west side of Broadway to Fifth street; thence along the southwest side of Fifth street to Rhode Island street; thence

along the southeast side of Rhode Island street to Broadway; thence along the west side of Broadway to Fourth street; thence along the southwest side of Fourth street to Connecticut street; thence along the northwest side of Connecticut street to the place of beginning; or so much thereof as may be required by the United States of America, and necessary for the purpose of erecting and establishing a fort, battery, barracks, parade ground or military post; provided always that this state shall have the right to quarry, carry off, and use, for public purposes, the stone on the southwest side of the reserve, called the "Military square," and of the reserve immediately north thereof, until the bank shall have been penetrated by such quarrying to within 50 feet of the southwest side of Fourth street; the United States of America being allowed to quarry, carry off, and use so much stone in said quarry as may be deemed necessary for the construction of the contemplated defenses, together with all the buildings and other erections that may be connected therewith, and which the commissioners of the land office have been authorized to convey accordingly, and also all lands acquired by the United States prior to February 9, 1844, under any law authorizing proceedings in the nature of a writ ad quod damnum, or by purchase of lands in the city of Buffalo and village of Black Rock, and all those streets, lanes and alleys between blocks Nos. 166, 167 and 168 in said village, and between such blocks and the premises above in this subdivision described.

Source.—Former State L. (L. 1892, ch. 678) § 29, subd. 17; originally revised from L. 1844, ch. 21.

18. *In Sackett's Harbor.* Such lands in the village of Sackett's Harbor, county of Jefferson, for the erection of forts, magazines, arsenals, dock yards and other needful buildings as the government of the United States may deem necessary, and on the property owned or to which it has or may acquire title.

Source.—L. 1892, ch. 505, § 1.

§ 30. **Authorization of acquisition and cession of jurisdiction thereupon, with reservations of concurrent jurisdiction and right to serve process.**—The United States has been authorized to acquire the following tracts or parcels of land, and jurisdiction thereof has been ceded to the United States upon such acquisition, on condition that the state of New York should retain a concurrent jurisdiction with the United States over such tracts of land in the execution of civil process in all cases, and of such criminal process as might be issued under the authority of the state of New York against any person charged with crime committed within or without such tracts of land, and that the jurisdiction of the United States shall continue so long only as the lands shall be used for the purposes of cession.

1. *At Watervliet, Albany county.* A tract of land in the town of Watervliet, Albany county, described as follows: Beginning at a stone set in

the ground, marked U. S. No. 2, standing at the south side of the Shaker road, and running thence from the said stone along the said road N. 72° E., 16 chains and 24 links, to a stone in the ground, marked U. S. No. 6; thence S. 22° W., 10 chains 76 links, to a stone in the ground, marked U. S. No. 7, thence N. 68° W., 12 chains 81 links, to the place of beginning, containing 6 acres and .89 of an acre. Also over all that other certain tract, piece or parcel of land situate, lying in and being in the town of Watervliet, in the county of Albany, aforesaid, bounded as follows, to wit: Beginning at a stone set in the ground, marked U. S. No. 4, and running thence N. 22° E., 6 chains and 34 links, to a stone in the ground, marked U. S. No. 3, standing at the south side of the Shaker road; thence S. 72° W., 16 chains and 24 links, to a stake (a stone in the ground marked U. S. No. 8), on the north side of the old Schenectady road; thence along the said road southeasterly 22 chains and 59 links, to the westerly corner of the burial ground; then along the outside thereof N. 57° 45' E., 3 chains and 29 links, to the most northerly corner of the said burial ground; thence S. 32° 15' E., 3 chains and 29 links, to the most easterly corner of the said burying ground; thence S. 69° E., 1 chain 44 links, to a stake (a stone in the ground marked U. S. No. 9); thence S. 79° 15' E., 12 chains 80 links, to a stone in the ground marked U. S. No. 10, on the west side of the Erie canal; thence along the canal N. 10° E., 9 chains and 93 links, to the south line of the land belonging to the people of the United States (designated by a stone in the ground, marked U. S. No. 11); thence along the said line N. 68° W., 24 chains 50 links, to the place of beginning, containing 38 acres and 7/10 of an acre; but always excepting and reserving out of the lands above described one rod in width along the west side of the Erie canal, for the purpose of erecting and maintaining thereon arsenals, magazines and other necessary buildings.

Source.—Former State L. (L. 1892, ch. 678) § 30, subd. 1; originally revised from L. 1833, ch. 96, §§ 3, 5.

2. *At Watervliet, Albany county.* A tract of land in the village of West Troy, town of Watervliet, Albany county, described as follows: Commencing at a point on the east bank of the Erie canal at the southwest corner of the United States arsenal grounds, and extending thence easterly along the said arsenal grounds to River street; thence southerly along the west line of said River street thirty feet; thence westerly on a line parallel with the said north line, to the west side of the alley next west of said River street; thence southerly along the west side of said alley to a point distant from the said north boundary line 293 feet and 6 inches; thence westerly on a line parallel with the said north boundary line, about 258 feet to the east bank of the Erie canal; thence northerly along the said east bank of said canal 300 feet, to the place of beginning, for the purpose of erecting and maintaining thereon arsenals, magazines and other necessary buildings, and of using the grounds in connection with the arsenal buildings already erected prior to the acquisition thereof.

Source.—Former State L. (L. 1892, ch. 678) § 30, subd. 2; originally revised from L. 1859, ch. 337.

3. *In the city of Buffalo.* A tract of land in the city of Buffalo, described as follows: Beginning at a point in the southerly margin of the Big Buffalo creek, at the southeast corner of lot No. 50 in the city of Buffalo, thence S. 45° and 30" W., 1,000 feet to Lake Erie; thence at right angles northerly and along the shore of Lake Erie, 200 feet; thence northerly on a line 200 feet from and parallel to the first mentioned line, 1,000 feet to the southerly margin of the Big Buffalo creek; and thence southerly at right angles and along the margin of said creek, 200 feet to the place of beginning; together with such other lands adjoining thereto, and in connection therewith and the waters of Lake Erie as shall be necessary for the purpose of excavating and maintaining a canal or channel to be used as a public highway, and connecting Lake Erie with said creek, and for the purpose of erecting and maintaining the necessary piers to protect the said canal or channel and a light-house at or near the mouth thereof.

Source.—Former State L. (L. 1892, ch. 678) § 30, subd. 3; originally revised from L. 1850, ch. 222, § 2.

4. *In the city of Buffalo.* A tract or tracts of land situate in the city of Buffalo, and the town of Black Rock, Erie county; for the purpose of erecting and maintaining a sea wall connecting with the pier on the south side of the Big Buffalo creek, belonging to the United States on January 1, 1850, and extending southerly therefrom along the shore of Lake Erie to the northerly side of the canal or channel connecting Lake Erie with Big Buffalo creek, and from the southerly side of such channel to Four Mile point.

Source.—Former State L. (L. 1892, ch. 678) § 30, subd. 4; originally revised from L. 1850, ch. 222, § 2.

§ 31. Cession during ownership by the United States and use for purposes thereof, with sundry reservations.—Title and jurisdiction to the following tracts or parcels of land has been ceded to the United States upon condition that the jurisdiction so ceded should not prevent the execution on such tracts or parcels of any process, civil or criminal, issued under the authority of this state; nor the operation within the same of the laws of this state, or the ordinances of the common council of the city of New York, for the general regulation of the civil police of such city, passed before the date of the deed of cession, and not incompatible with the purpose for which such cession was made; and that the United States shall retain such use and jurisdiction so long only as such tracts shall be used for the defense and safety of the city of New York:

1. *In the city of New York.* A tract of land and land under water, in the city of New York, described in a deed dated May 6, 1808, as follows: "Beginning in the Hudson river at a point in the continuation of the south

line of Hubert street, bearing N. 79° 30' W., from the southeasterly corner of Hubert and West streets, distant 200 feet westerly from the permanent line of West street, which said permanent line bears S. 10° 15' W., from the southwesterly corner of the state prison wall; thence N. 10° 15' E., parallel to the said permanent line, 305 feet, to a point in the continuation of the north line of Laight street; thence N. 79° 30' W., 300 feet into the Hudson river; thence S. 10° 15' W., 305 feet to a point in the continuation of the south line of Hubert street aforesaid; thence S. 79° 30' E., 300 feet, to the place of beginning," acquired for the defense and safety of the city of New York.

Source.—Former State L. (L. 1892, ch. 678) § 31, subd. 1; originally revised from R. S., pt. 1, ch. 1, tit. 5, § 7, part.

2. *In the city of New York.* A tract of land or land under water in the city of New York, described in a deed dated May 6, 1808, as follows: "Beginning at a point in the line of the present battery, six feet southerly of the most southern external angle formed by the main battery and the present bastion, which said point is 497 feet 11 inches on a course S. 36° 20' W., from the southeasterly corner of the brick house situate at the corner of Marketfield street and Broadway, now or lately belonging to Robert Kennedy, and is also on a course S. 89° 10' W., 264 feet 1 inch from the northwesterly corner of Bridge and State streets; thence N. 16° 10' W., 310 feet; thence S. 64° W., 500 feet; thence S. 26° E., 300 feet; thence N. 64° E., 425 feet, to the place of beginning; all of which courses are to be run as the magnetic needle pointed on May 6, 1808," acquired for the defense and safety of the city of New York.

Source.—Former State L. (L. 1892, ch. 678) § 31, subd. 2; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 7, part.

3. *In East river.* A tract of land under water in East river at the Wallabout bay, and adjoining the navy yard of the United States, described in a deed dated April 3, 1810, as follows: "Beginning at the southerly end of the dam of the pond at the navy yard, at a point designated on the map or chart comprising a delineation of the said parcel of land hereunto annexed, by the letter A, from which point the easterly corner of the commander's house at the navy yard bears N. 29° 45' W., the steeple of the Reformed Dutch Church at Brooklyn bears S. 62° W., and the south corner of the dwelling-house of Jeremiah Johnson bears N. 80° 25' E., and running from the said point designated as aforesaid by the letter A, N. 52° 30' E., 2,290 feet to a point from which the north corner of the dwelling-house of the said Jeremiah Johnson bears S. 70° 30' E., designated by the letter B, in the said map or chart, and running from the said last-mentioned point N. 7° E., 1,580 feet, to a point from which the southwest corner of Thompson's house on the Long Island shore bears N. 76° 45' E., the steeple of the Reformed Dutch Church in Brooklyn bears S. 48° 25' W., and the steeple of St. Paul's Church in the city of New York bears

N. 79° W., and designated in the said map or chart by the letter C; and running from the said last-mentioned point S. 70° W., 2,480 feet to the north corner of the navy yard, designated in the said map or chart by the letter D; and thence southerly along the navy yard to the place of beginning; all which courses and bearings are taken as the magnetic needle pointed on April 3, 1810," acquired for the defense and safety of the city of New York.

The free and common use of the waters not appropriated by the United States for wharves or fortifications to the eastward of the navy yard of the United States and the westward of the east boundary line of the land above described, is reserved to the people of this state.

Source.—Former State L. (L. 1892, ch. 678) § 31, subd. 3; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 8.

§ 32. **Cession during use for purposes thereof, with sundry reservations.**—Title and jurisdiction to the following tract or parcel of land has been ceded to the United States by this state upon condition that the jurisdiction so ceded should not prevent the execution on such tract of any process, civil or criminal, issued under the authority of this state, nor prevent the laws of the state, not incompatible with the purposes for which such cession is made, from operating within the bounds of such tract; and that the United States are to retain such jurisdiction so long only as such tract shall be used for the defense and safety of the city of New York:

1. *At New Utrecht.* A tract of land in the town of New Utrecht, Kings county, on the easterly side of the Narrows, at the entrance into the bay of New York, and upon a reef called Hendrick's reef, described as follows: Beginning at the northerly corner thereof, by land of Denyse D. Denyse, at high-water mark, and near the southeasterly side of a large rock, and running from thence S. 24° 30' E., 7 chains and 17 links along said high water mark to the land of Jaques Cortelyou; thence S. 64° 45' W., 24 chains to the southerly corner of the hereby granted premises; thence N. 25° 15' W., 7 chains and 17 links; thence N. 10° 30' W., 11 chains and 70 links, to the westerly corner of the hereby granted premises; thence S. 86° E., 24 chains to the place of beginning, containing 30 acres, 2 roods and 4 perches; all which courses and bearings are taken as the magnetic needle pointed November 6, 1812, acquired for the defense and safety of the city of New York.

The free and common passage over the waters aforesaid about the said tract, not actually appropriated by the United States for wharves, bridges, fortifications or public obstructions, is reserved to the people of this state.

Source.—Former State L. (L. 1892, ch. 678) § 32, originally revised from R. S., pt. 1, ch. 1, tit. 3, § 11.

§ 33. **Cession with sundry reservations.**—Title and jurisdiction to the

following described tract or parcel of land has been ceded to the United States by this state upon condition that the jurisdiction so ceded should not prevent the execution on such tract or parcel of any process, civil or criminal, issuing under the authority of this state, nor the operation of the public laws of this state upon such tract, so far as the same might not be incompatible with the free use and enjoyment of the premises by the United States, for the purpose of the erection of magazines, arsenals, barracks and other needful buildings.

Town of Greenbush. A tract of land in the town of Greenbush in the manor of Rensselaerwick, county of Rensselaer and state of New York, which was leased by Stephen VanRensselaer to Christopher Yates, on the 16th day of August, 1790, bounded and described as follows: "Beginning at a stake and stones standing at the distance of 12 chains and 45 links from the southwest corner of the kitchen on the premises, on a course N. 49° 30' W., and running thence N. 49° 30' W., 1 chain and 6 links; thence N. 59° 45' W., 6 chains and 78 links; thence N. 29° E., 3 chains and 73 links; thence N. 16° E., 9 chains and 24 links; thence S. 60° E., 7 chains and 20 links; thence S. 30° E., 1 chain; thence S. 50° E., 2 chains; thence N. 15° E., 29 chains; thence S. 39° E., 38 chains and 12 links; thence due East 10 chains; thence S. 11° 30' E., 48 chains and 80 links; thence due W. 32 chains and 20 links; thence due N. 10 chains; thence N. 26° W., 5 chains and 53 links; thence S. 37°, 6 chains and 47 links; thence N. 18° W., 2 chains and 27 links; thence N. 10° W., 3 chains and 71 links; thence N. 2° W., 3 chains and 58 links; thence N. 70° E., 1 chain and 18 links; thence N. 18° W., 4 chains and 87 links; thence N. 77° 40' W., 2 chains and 97 links; thence S. 15° 40' W., 12 chains and 31 links; thence S. 9° E., 8 chains and 34 links; thence S. 57° E., 2 chains and 44 links; thence S. 17° W., 9 chains; thence N. 68° W., 22 chains and 30 links; thence due S. 4 chains and 40 links; thence N. 60° E., 6 chains; thence N. 29° W., 6 chains and 20 links; thence N. 13° W., 3 chains; thence S. 68° E., 5 chains and 21 links; thence S. 32° 18' E., 6 chains and 40 links; thence S. 3° 42' W., 1 chain and 80 links; thence S. 89° 48' E., 4 chains and 30 links; thence N. 3° 42' E., 9 chains and 90 links; thence S. 86° 18' E., 6 chains and 20 links; thence N. 3° 42' E., 14 chains and 50 links; thence N. 86° 18' W., 6 chains and 20 links; thence S. 3° 42' W., 3 chains and 80 links; thence N. 42° 18' W., 10 chains and 80 links, to the beginning, containing 261 acres and .3 of an acre"; acquired for the purpose of erecting magazines, arsenals, barracks and other needful buildings.

Source.—Former State L. (L. 1892, ch. 678) § 33; originally revised from R. S., pt. 1, ch. 1, tit. 3, § 10.

§ 34. Cession during use for purposes thereof, with sundry reservations.—Title and jurisdiction of the following described tracts or parcels of land has been ceded to the United States by this state on condition that

the jurisdiction so ceded should not prevent the execution on such tracts of any process, civil or criminal, issued under the authority of this state, nor prevent the laws of this state, not incompatible with the purposes for which such cession was made from operating within the bounds of such tracts, and that the jurisdiction of the United States shall continue so long only as such tracts shall be applied to the use of providing for the defense and safety of this state:

Three separate tracts of land in the county of Oneida, the county of Albany and the county of Clinton, the first of which is described as follows: "All that certain piece or parcel of land situate in the village of Rome, county of Oneida, and state of New York, on which the arsenal, armory and other buildings belonging to the United States, are erected, distinguished as lots Nos. 4, 5, 6, 13, 14 and 15, in block No. 6 of said village, lying contiguous and forming one entire lot, and is bounded as follows, to wit: Beginning at the northwesterly corner of lot No. 7, in said block No. 6, and running thence westerly on the line of Dominick street, N. $36^{\circ} 20'$ W., in 1796, 198 feet, to the northeasterly corner of lot No. 3 in said block No. 6; thence at right angles with Dominick street, southerly, 432 feet, to the south bank of the canal connecting Wood creek with the Mohawk river; thence easterly on the north bank of said canal to the southwesterly corner of lot No. 12 in said block No. 6, 216 feet; thence running northerly at right angles with Dominick street to the place of beginning, 340 feet. Also, lot No. 5 in block No. 7 bounded as follows, to wit: Beginning at the southwesterly corner of lot No. 6 in block No. 7, and running thence westerly on the line of Dominick street, 66 feet to the southeasterly corner of lot No. 4, in said block No. 7; thence northerly at right angles with Dominick street, 200 feet, to the southerly line of Stone alley; from thence easterly on the southerly line of Stone alley, and parallel to Dominick street, 66 feet; from thence at right angles with Dominick street, 200 feet, to the place of beginning." The second of said tracts is described as follows: "And also all that certain piece or parcel of land situate in the town of Watervliet, in the county of Albany, and state aforesaid, at the place called Gibbonsville, on which is also erected an arsenal and other buildings belonging to the United States bounded as follows, to wit: Beginning at an elm tree standing on the bank of Hudson's river in the village of Gibbonsville, thence running by the true meridian (the variation of the magnetic needle being calculated at $5^{\circ} 30'$ to the west of north), north $75\frac{1}{2}^{\circ}$ W., 11 chains and 35 links; thence S. $14\frac{1}{2}^{\circ}$ W., 3 chains and 86 links; thence N. $75\frac{1}{2}^{\circ}$ W., 7 chains and 75 links; thence S. $14\frac{1}{2}^{\circ}$ W., 3 chains; thence S. $75\frac{1}{2}^{\circ}$ E., 7 chains and 75 links; thence S. $14\frac{1}{2}^{\circ}$ W., 3 chains and 71 links; thence S. $75\frac{1}{2}^{\circ}$ E., 11 chains and 35 links, to the bank of Hudson's river; thence S. $75\frac{1}{2}^{\circ}$ E., to the main channel of the said river; thence northerly along said channel to intersect a line drawn S. $75\frac{1}{2}^{\circ}$ E., from the first station; and then N. $75\frac{1}{2}^{\circ}$ W., to the place of beginning." The third of such tracts

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is described as follows: "Lots Nos. 61, 62, 63, 64, 65 and 66 of the 80 acre lots in the tract granted to the Canadian and Nova Scotia refugees, containing in the whole 480 acres, and also over a tract of 9 acres 3 roods and 5 poles, being the east end or front of lot No. 60 in the same tract; which tracts are situated at Rouse's Point in the county of Clinton, on the west bank of Lake Champlain"; acquired for the defense and safety of the state.

Source.—Former State L. (L. 1892, ch. 678) § 34; originally revised from R. S., pt. 1, ch. 1, tit. 3, §§ 12, 13.

§ 35. **Cession of jurisdiction to lands acquired for light-house purposes.**—The jurisdiction to such tracts of land, not exceeding ten acres, acquired by the United States for the construction and maintenance of light-houses and keepers' dwellings before April 18, 1861, or as shall have been acquired since such date, or as shall be hereafter acquired, upon the selection by an authorized officer of the United States, the approval of the governor, the filing in the office of the secretary of state of a description of the boundaries thereof, with the approval of the governor indorsed thereon, and the filing and recording in such office of a map thereof, is ceded to the United States, upon condition that the jurisdiction so ceded shall not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as the land shall be used and occupied for the purposes of the cession, unless the consent of the state to a different use shall have been granted.

Source.—Former State L. (L. 1892, ch. 678) § 35; originally revised from L. 1861, ch. 313, §§ 5, 13.

§ 36. **Acquisition by condemnation.**—When the United States shall have been authorized by law to acquire title to any real property within this state, such title may be acquired by gift or grant from the owners thereof, or by condemnation if, for any reason, the United States is unable to agree with the owners for the purchase thereof.

Source.—Former State L. (L. 1892, ch. 678) § 36; section was new in former State Law.

References.—For condemnation procedure, see Code Civ. Pro. §§ 3357-3384.

§ 37. **Saving clause.**—The adoption of this article shall not be construed to cede to the United States any territory or jurisdiction over any territory not so ceded by the laws repealed by the consolidation of the general laws of the state of which this article is a part, or to change the terms or conditions upon which such cessions were originally made.

Source.—Former State L. (L. 1892, ch. 678) § 37; section was new in former State Law.

ARTICLE IV.

PURCHASE AND ACQUISITION OF LAND BY THE UNITED STATES.

Section 50. Consent of state to purchase of land and record of conveyances.

51. Proceedings for acquiring title.
52. Governor may execute deed or release.
53. Concurrent jurisdiction as to service of process.
54. Exemption of property from state taxation.
55. Delivery and filing of deeds and leases.
56. Statement to be published in session laws.
57. Article not to apply to Orange county.

§ 50. Consent of state to purchase of land and record of conveyances.—The consent of the state of New York is hereby given to the purchase by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate within the boundaries of this state, for the purpose of parade or maneuver grounds, aviation fields, navy yards and naval stations, or for the purpose of erecting thereon lighthouses, beacons, lighthouse keepers' dwellings, works for improving navigation, post-offices, custom-houses, fortifications, or buildings and structures for the storage, manufacture or production of supplies, ordnance, apparatus or equipment of any kind whatsoever for the use of the army or navy and all deeds, conveyances or other papers relating to the title thereof shall be recorded in the office of the register, if any, or if not in the office of the county clerk of the county where the said lands are situated. (*Amended by L. 1910, ch. 109, L. 1911, ch. 527 and L. 1917, ch. 819, in effect Sept. 11, 1917.*)

Source.—L. 1896, ch. 391, § 1.

§ 51. Proceedings for acquiring title.—Whenever the United States is desirous of purchasing or acquiring the title to any tract, piece or parcel of land within the boundaries of this state for any of the purposes aforesaid, and can not agree with the owner or owners thereof, or of any interest therein, as to the purchase thereof, or if the owners of any of said lands are unknown, infants, of unsound mind, or nonresidents, or if for any other reason a perfect title can not be made to said lands, or any part thereof, the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, is authorized to apply to the supreme court of the state, in and for the county within which the said lands are situated, or to the circuit court of the United States in the judicial district in which said lands are situated, to have the said lands condemned for the use and benefit of the United States, under the provisions of the statutes of this state applying to condemnation of lands.

Any time during the existence of a state of war between the United States and any foreign power, the United States may, by any agent duly

authorized under the hand and seal of any head of an executive department of the government of the United States, for the purposes described in section fifty of this act, select, locate, enter upon and acquire any rights, easements or interest in property, either in fee or for the term of one year or longer, within this state. Said agent shall from time to time cause to be made, accurate maps of such lands which, or rights and easements in which, he shall determine to take, which maps shall be certified by him and specify with respect to each parcel of land whether the whole title thereof is to be taken and if the whole is not to be taken, the rights, easements or interests therein and for what period of time, that the same is taken. Said maps shall also show the names of the reputed owners of such lands and shall contain a description of the lands to be appropriated and shall be filed in the office of the secretary of state and a duplicate thereof shall be filed in the office of the clerk or register of the county wherein said lands are situated. Said agent shall thereupon serve upon the owners of any real property so appropriated a notice of the filing and date of filing of such maps, which notice shall specifically describe that portion of the property belonging to such owners which has been so appropriated and what estate therein has been taken. If said agent shall not be able to serve such notice upon the owner personally within this state after making efforts so to do which in his judgment are under the circumstances deemed reasonable and proper, he may serve the same by filing with the clerk or register of the county wherein said lands are situated. From the time of the service of such notice, the entry upon and the appropriation by the United States of said estate in the property described for any of the purposes above mentioned shall be deemed complete and thereupon such property or said limited estate or interest therein so taken shall become the property of the United States. Such notice so served shall be conclusive evidence of an entry and appropriation by the United States. Said agent may cause a copy of such notice or notices with an affidavit or affidavits of due service thereof on such owner or on the county clerk or register as the case may be, to be recorded in the books used for recording deeds in the office of the clerk or register of the county in which such lands are situated and such records shall be evidence of the due service thereof and of the title of the United States to the property so appropriated. Said agent shall have the power after the filing of such map and service of such notice to fix and determine with each and any of the respective owners of such lands upon the fair value thereof and may agree upon a price to be paid therefor by the United States and accepted by such owners respectively. In case such agent shall not agree with any owner or owners of such lands so appropriated, then said agent shall proceed forthwith to determine the amount of compensation to be paid for the property so taken and appropriated by a proceeding taken under the provisions of this act and title one of chapter twenty-three of the code of civil procedure, known as the condemnation law. Said proceeding for the purpose of determining such compensation shall be instituted and maintained in the name of the United States of

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America. No petition shall be necessary to institute such proceeding and the supreme court shall upon application of the United States and on ten days' notice to the owners of the property or, if they be unknown, to the county clerk, appoint three commissioners of appraisal as provided in the condemnation law. The compensation awarded by such commissioners of appraisal after the confirmation of their report by the supreme court shall be paid by the United States. The condemnation law shall apply to all proceedings hereunder except in so far as the provisions of this act are inconsistent therewith.

The people of the state of New York may at any time be joined as party defendant in any condemnation proceeding instituted for the acquisition of any lands for any of the purposes aforesaid in which the people of this state have or may have any right, title or interest, and any awards which may be made to the people of the state of New York shall be paid into the state treasury. (*Amended by L. 1910, ch. 109, and L. 1917, ch. 654, in effect May 25, 1917.*)

Source.—L. 1896, ch. 391, § 2.

§ 52. Governor may execute deed or release.—Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed and recorded in the office of the secretary of state of the state of New York, certified copies of the record or transfer to the United States of any tracts or parcels of land within this state, which have been acquired by the United States for any of the purposes aforesaid, together with maps or plats and descriptions of such lands by metes and bounds, and a certificate of the attorney-general of the United States that the United States is in possession of said lands and premises for either of the works or purposes aforesaid, under a clear and complete title, the governor of this state is authorized, if he deems it proper, to execute in duplicate, in the name of the state and under its great seal, a deed or release of the state ceding to the United States the jurisdiction of said tracts or parcels of land as hereinafter provided.

Source.—L. 1896, ch. 391, § 3.

§ 53. Concurrent jurisdiction as to service of process.—The said jurisdiction so ceded shall be upon the express condition that the state of New York shall retain a concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States.

Source.—L. 1896, ch. 391, § 4.

§ 54. Exemption of property from state taxation.—The said property shall be and continue forever thereafter exonerated and discharged from

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all taxes, assessments and other charges, which may be levied or imposed under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted, shall continue in respect to said property so long as the same shall remain the property of the United States, and be used for the purposes aforesaid, and no longer.

Source.—L. 1896, ch. 391, § 5.

§ 55. **Delivery and filing of deeds and releases.**—One of the deeds or releases so executed in duplicate shall be delivered to the duly authorized agent of the United States, and the other deed or release shall be filed and recorded in the office of the secretary of state of the state of New York; and said deed or release shall become valid and effectual only upon such filing and recording in said office. (*Thus amended by L. 1909, ch. 240, § 76.*)

Source.—L. 1896, ch. 391, § 6.

§ 56. **Statement to be published in session laws.**—The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the application of the United States for said deed and a copy of the description of the lands so conveyed or ceded, together with the date of the recording of said deed in the office of the said secretary of state.

Source.—L. 1896, ch. 391, § 7.

§ 57. **Article not to apply to Orange county.**—This article shall not apply to the county of Orange.

Source.—L. 1896, ch. 391, § 8.

ARTICLE 4-A.

ACQUISITION OF LAND FOR PUBLIC DEFENSE.

(Article added by L. 1917, ch. 13 and amended throughout by L. 1917, ch. 130.)

Section * 58. **Lands to be acquired; commission.**

59. **Survey and map of lands to be acquired; appropriation of land.**

59-a. **Notice to owners.**

59-b. **Purchase or acquisition of lands; payment of purchase price.**

59-c. **Searches of title.**

59-d. **Use of lands so acquired.**

59-e. **Deed or release of land so acquired to the U. S.**

59-f. **Concurrent jurisdiction as to service of process.**

59-g. **Exemption of property from state taxation.**

59-h. **Statement to be published in session laws.**

§ 58. **Lands to be acquired; commission.**—Whenever any lands, structures or waters, situated within the boundaries of this state, are, in the judgment of the governor, necessary for purposes of public defense, or for other public purposes incidental thereto including public highway purposes, the estates, titles and interests in and to such lands, structures or

* Schedule is editorial.

waters, belonging to or vested in any person, corporation or municipality, may be acquired by the state as provided in this article. If any of such lands are, in the judgment of the governor, needed for public highway purposes leading to, from, across or around such appropriated lands, such estate as may in his judgment be necessary therefor may be acquired in such strips of land, not exceeding one hundred feet in width, as in his judgment are needed for such purposes. The governor shall, whenever lands, structures or waters, to be designated by him, are required for such purposes, direct the adjutant general, the state engineer and the superintendent of public works, to take such actions and institute such proceedings as may be necessary to acquire such lands and easements in the name and for the benefit of the people of the state. Such officers are hereby constituted a commission for the purpose of acquiring title to such lands and the structures and water thereon.

§ 59. Survey and map of lands to be acquired; appropriation of land.—When directed by the governor to acquire designated lands, structures or waters, for the purposes hereinbefore prescribed, the commission shall cause a survey and map of such lands to be made. The members of such commission and its duly authorized agents and employees may enter upon such lands, and the structures and waters thereon, for the purpose of making such survey and map. The state engineer shall annex to such survey and map his certificate as to the accuracy thereof. There shall be annexed thereto a certificate executed by the members of the commission, stating that the lands and the structures and waters thereon, described in such survey and map, are necessary for purposes of public defense and for other public purposes incidental thereto including public highway purposes. If any rights of way, easements or other estates or interests in lands are acquired for public highway purposes, the certificate of the commission shall include a description of the strips of land to be used for such purposes. The original of such survey and map and the certificates annexed thereto shall be submitted to the governor, and if approved by him, it shall be filed in the office of the secretary of state. A copy of such survey, map and certificates, certified by the secretary of state, shall be filed by the commission in the office of the county clerk of each county in which such lands, or any portion thereof, are situated.

From the time of the filing of the said survey and map in the office of the secretary of state, entry upon and appropriation by the state, of the property described in such survey and map for the purposes hereinbefore prescribed, shall be deemed complete and the strips of land selected for such public highway purposes shall thereupon become and be and forever continue to be open and established public highways. The commission shall, immediately upon such filing of the survey and map in the office of the secretary of state, enter upon and take possession of all the lands, structures and waters described in such survey and map. The commission

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shall thereupon cause the strips of land selected for public highway purposes to be constructed and improved as such. The expenses of such construction and improvement shall be paid by the treasurer out of funds appropriated therefor, on the warrant of the comptroller. Such highways shall thereafter be maintained and repaired under the direct supervision and control of the state department of highways as a part of the improved highways of the state.

§ 59-a. **Notice to owners.**—The adjutant general shall, upon the filing of the certified copy of such survey, map and certificates in the office of such county clerk, serve upon the owners of the lands, and the structures and waters thereon, included in such survey, and upon all persons, corporations or municipalities having any estate or interest therein, a notice of the filing of such survey, map and certificates as above provided, which notice shall specifically describe that portion of the property belonging to the owner which has been so appropriated for the purposes hereinbefore prescribed. If the adjutant general is not able to serve such notice upon the owner of such property or the person or corporation having an estate or interest therein, after making reasonable effort to do so, or if he is unable to ascertain the persons, corporations or municipalities owning such lands and the structures and waters thereon, or is unable to discover the character of the estate or interest in and to such lands, of any person, corporation or municipality, he shall cause such notice to be published at least once in a newspaper published in the county where such land or any portion thereof is situated, and in such other newspapers as he may deem advisable.

§ 59-b. **Purchase or acquisition of lands; payment of purchase price.**—The commission shall cause an appraisal to be made of just compensation to the owners of the lands and the structures and waters thereon, appropriated by the state as hereinbefore provided, and of the estate and interests therein of all persons, corporations or municipalities. The commission shall negotiate with the owners of such property for the purchase thereof, but in no case shall an amount greater than the appraised compensation for such property be paid. The commission and the persons, corporations and municipalities whose property has been appropriated and who have agreed upon a compensation to be paid therefor, shall enter into an agreement for the conveyance or transfer of the property appropriated and for the payment of the compensation to be paid, which shall be executed by the commission and the said owners. Such agreement shall be filed in the office of the comptroller. If the commission is unable to agree as to the compensation to be paid for such lands and the structures and waters thereon, the court of claims shall have jurisdiction to determine the amount of such compensation, and upon proceedings being brought before such court as provided by law, an award shall be made of com-

pensation for the lands, structures and waters or interests therein so appropriated.

The persons, corporations or municipalities whose property has been taken under the provisions of this article, and who have agreed upon the compensation to be paid therefor or to whom an award of compensation has been made by the court of claims, shall be entitled to interest from the time of the actual occupancy thereof by the state to the date of the payment of the said compensation; but such interest shall cease upon the service by the comptroller upon the person, corporation or municipality entitled thereto of a notice that the state is ready and willing to pay the amount of such compensation upon the presentation of proper proof and vouchers.

§ 59-c. **Searches of title.**—The attorney-general shall furnish to the commission all searches necessary to prove the title to the lands taken as provided in this article. The expense of making such searches shall be paid by the state treasurer out of funds appropriated therefor, on the warrant of the comptroller.

§ 59-d. **Use of lands so acquired.**—Whenever lands and the structures and waters thereon shall have been so appropriated for the purposes hereinbefore prescribed, the governor shall have the authority to direct the carrying out of such purposes for and on behalf of the people of the state or in co-operation with the government of the United States, and the expense thereof shall be paid by the state treasurer out of funds appropriated therefor, on the warrant of the comptroller.

§ 59-e. **Deed or release of land so acquired to United States.**—The governor may, if requested by any officer or agent of the United States duly authorized under the hand and seal of any head of an executive department of the government of the United States, execute a deed or release to the government of the United States of the lands and the structures and waters thereon, described in the survey and map filed in the office of the secretary of state as hereinbefore provided, excepting and reserving therefrom an easement for public highway purposes in and over the lands acquired for highway purposes pursuant to this article. Such deed or release may be so executed at any time after the commission shall have entered upon and taken possession of such lands, structures and waters. Such deed or release shall be in the form agreed upon by the governor and the proper representative of the government of the United States and shall convey title to the lands, structures and waters described therein to the government of the United States, to be used for purposes of public defense and shall cede to the United States the jurisdiction over the tracts or parcels of land so described, to the extent and in the manner hereinafter provided. Such deed or release shall be executed in duplicate in the name of the state and under its great seal. One of such duplicates shall be filed and recorded in the office of the

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Entry upon lands for United States survey.

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secretary of state of the state of New York, and the other shall be delivered to the proper executive department of the government of the United States.

§ 59-f. **Concurrent jurisdiction as to service of process.**—The jurisdiction so ceded shall be upon the express condition that the state of New York shall retain concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same manner as if such jurisdiction had not been ceded, except so far as such process may effect the real or personal property of the United States.

§ 59-g. **Exemption of property from state taxation.**—The property so conveyed and released to the United States shall be exempted from all taxes, assessments and other charges, which may be levied or imposed under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted shall continue in respect to such property so long as the same shall remain the property of the United States and be used for purposes of public defense, and no longer.

§ 59-h. **Statement to be published in session laws.**—The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the filing of the survey and map of the lands, structures and waters so appropriated, and a copy of the deed or release of the lands, structures and waters so conveyed or ceded, together with the date of the recording of said deed or release in the office of the secretary of state.

L. 1917, ch. 130 § 2 appropriates \$2,610,000.

ARTICLE V.

ENTRY UPON LANDS FOR PURPOSES OF UNITED STATES SURVEY.

Section 60. Entry upon lands for purposes of United States survey.

§ 60. **Entry upon lands for purposes of United States survey.**—Any person employed under and by virtue of an act of congress of the United States, passed the tenth day of February, one thousand eight hundred and seven, and of the supplements thereto, may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying and doing any other act which may be necessary to carry out the objects of said laws, and may erect any works, stations, buildings and appendages requisite for that purpose, doing no unnecessary injury thereby.

If the parties interested can not agree upon the amount to be paid for damages caused thereby, either of them may petition the supreme court in the county in which the land is situated, which court shall appoint a

time for a hearing as soon as may be, and order at least fourteen days' notice to be given to all parties interested, and with or without a view of the premises, as the court may determine, hear the parties and their witnesses and assess damages.

The person so entering upon land may tender to the party injured amends therefor, and if in case of appeal to the supreme court the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs, otherwise the prevailing party shall recover costs.

The costs to be allowed in all such cases shall be the same as allowed according to rules by the court.

If any person shall wilfully deface, injure, or remove any signal, monument, building, or other property of the United States coast and geodetic survey, constructed or used under or by virtue of the acts of congress aforesaid, he shall forfeit a sum not exceeding fifty dollars for each offense, and shall be liable for damages sustained by the United States in consequence of such defacing, injury or removal, to be recovered in an action on the case in any court of competent jurisdiction.

Source.—L. 1905, ch. 380.

ARTICLE VI.

ARMS AND GREAT SEAL OF STATE.

Section 70. Description of the arms of the state and the state flag.

71. Painted devices of arms in certain public places.
72. Prohibition of other pictorial devices.
73. Great seal of the state.
74. Use of the great seal.

§ 70. Description of the arms of the state and the state flag.—The device of arms of this state, as adopted March sixteenth, seventeen hundred and seventy-eight, is hereby declared to be correctly described as follows:

Charge. Azure, in a landscape, the sun in fess, rising in splendor or, behind a range of three mountains, the middle one the highest; in base a ship and sloop under sail, passing and about to meet on a river, bordered below by a grassy shore fringed with shrubs, all proper.

Crest. On a wreath azure and or, an American eagle proper, rising to the dexter from a two-thirds of a globe terrestrial, showing the north Atlantic ocean with outlines of its shores.

Supporters. On a quasi compartment formed by the extension of the scroll.

Dexter. The figure of Liberty proper, her hair disheveled and decorated with pearls, vested azure, sandaled gules, about the waist a cincture or, fringed gules, a mantle of the last depending from the shoulders behind to the feet, in the dexter hand a staff ensigned with a Phrygian cap or, the sinister arm embowed, the hand supporting the shield at the dexter chief point, a royal crown by her sinister foot dejected.

Sinister. The figure of Justice proper, her hair disheveled and decorated with pearls, vested or, about the waist a cincture azure, fringed gules, sandaled and mantled as Liberty, bound about the eyes with a fillet proper, in the dexter hand a straight sword hilted or, erect, resting on the sinister chief point of the shield, the sinister arm embowed, holding before her her scales proper.

Motto. On a scroll below the shield argent, in sable, *Excelsior*.

State flag. The state flag is hereby declared to be blue, charged with the arms of the state in the colors as described in the blazon of this section.

Source.—Former State L. (L. 1892, ch. 678) § 40; superseding originally without change of language L. 1882, ch. 190, § 1.

§ 71. Painted devices of arms in certain public places.—The device of arms of the state, corresponding to the blazon hereinbefore given, shall be painted in colors upon wood or canvas, and hung upon the walls of the executive chamber, the court of appeals, the office of the secretary of state, and the senate and assembly chambers.

Source.—Former State L. (L. 1892, ch. 678) § 41; superseding originally without change of language L. 1882, ch. 190, § 5.

§ 72. Prohibition of other pictorial devices.—No pictorial devices other than the arms of the state shall be used in the public offices at the capitol for letter headings and envelopes used for official business. Persons printing and circulating public documents under the authority of the state, when they use a vignette, shall place upon the title pages of the documents the standard device of the state arms without alterations or additions.

Source.—Former State L. (L. 1892, ch. 678) § 42; superseding originally without change of language L. 1882, ch. 190, § 6.

§ 73. Great seal of the state.—The secretary of state shall cause to be engraved upon metal two and one-half inches in diameter the device of arms of this state, accurately conformed to the description thereof given in this article, surrounded with the legend, "The great seal of the state of New York." It alone shall be used as the great seal of the state, and the secretary of state shall have the custody thereof.

Source.—Former State L. (L. 1892, ch. 678) § 43; superseding originally without change of language part of L. 1882, ch. 190, § 2.

§ 74. Use of the great seal.—All such matters as have issued under the great seal of the state since March sixteenth, seventeen hundred and seventy-eight, shall continue to be issued under such seal, except copies of papers and records certified by the secretary of state or his deputy and authenticated under his seal of office.

Source.—Former State L. (L. 1892, ch. 678) § 44; originally revised from R. S., pt. 1, ch. 8, tit. 2, § 21.

ARTICLE VII.

CONGRESSIONAL DISTRICTS.

Note.—The following chapter supersedes Article VII of the State Law.

L. 1911, ch. 890.—An act dividing the state into congressional districts. (*In effect Oct. 19, 1911.*)

Section 1. Districts.—For the election of representatives in congress of the United States, this state shall be and is hereby divided into forty-three districts, namely:

First district. The county of Suffolk, the county of Nassau, the twenty-second and twenty-third election districts of the second assembly district of the county of Queens, the twenty-first, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth and thirty-fifth election districts of the fourth assembly district of the county of Queens, as now constituted, shall compose the first district. The boundaries of the said first district are as follows: Suffolk county, Nassau county, and that portion of Queens county bounded as follows: Beginning at the boundary line of Nassau county and Queens county at Central avenue, and running along Central avenue in a westerly direction to Farmers avenue, thence in a northerly direction along Farmers avenue to the junction of the Long Island railroad and Old Country road, running along Old Country road to Fulton street, thence westerly along Fulton street to Bergen avenue, thence northerly along Bergen avenue to Hillside avenue, easterly on Hillside avenue to Grand avenue, thence northerly on Grand avenue to the boundary line between the third and fourth wards, thence westerly along the boundary line between the third and fourth wards to Flushing creek, the boundary line between the second and third wards, thence northerly along said Flushing creek to Strong's causeway, and thence easterly along Strong's causeway and the boundary line between the second assembly district and the fourth assembly district of the county of Queens, said line being through Ireland Mill road to Lawrence avenue, through Lawrence avenue to Bradford avenue, through Bradford avenue to Main street, to Lincoln street, to Union avenue, through Union avenue to Whitestone road, through Whitestone road to Eighteenth street, through Eighteenth street to the Boulevard, through the Boulevard to Long Island sound, along Long Island sound and Little Neck bay to the boundary line between the county of Queens and the county of Nassau and along said boundary line between the county of Queens and the county of Nassau to Central avenue, the point or place of beginning.

Second district. The first assembly district of the county of Queens, the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-fourth, twenty-fifth.

twenty-sixth, twenty-seventh and twenty-eighth election districts of the second assembly district of the county of Queens; the first, second, third, fourth, fifth, sixth, seventh eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first and forty-second election districts of the third assembly district of the county of Queens and the fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-second, twenty-third and twenty-fourth election districts of the fourth assembly district of the county of Queens, shall compose the second district. The boundaries of the said second district are as follows: Beginning at Central avenue on the boundary line between the county of Queens and the county of Nassau and running along said boundary line in a southerly direction to the Atlantic ocean, thence along said Atlantic ocean to Rockaway inlet and the boundary line between the county of Kings and the county of Queens, thence along said boundary line between said counties in a northeasterly and northerly direction to Atlantic avenue, thence easterly along Atlantic avenue to Morris avenue, thence southerly along Morris avenue to Rockaway road, thence southeasterly along Rockaway road to Bergen Landing road, thence northeasterly along Bergen Landing road to Van Wyck avenue; along Van Wyck avenue northerly to Newtown road, thence northwesterly along Newtown road to the boundary line between the second and third wards of the borough of Queens, thence westerly along said boundary line and the boundary line between the county of Kings and the county of Queens, thence northwesterly along said boundary line to Newtown creek, thence northwesterly along Newtown creek to the East river, thence along said East river and Long Island sound through Powell's cove to the point where the boulevard intersects Powell's cove, thence in a southerly direction along the boulevard to Eighteenth street, thence easterly along Eighteenth street to Whitestone avenue, then in a southwesterly direction along Whitestone avenue to Union avenue and along Union avenue to Lincoln street, thence along Lincoln street to Main street, thence along Main street to Bradford avenue, thence along Bradford avenue to Lawrence avenue, thence along Lawrence avenue in a southwesterly direction along the boundary line between the second and third wards of the borough of Queens, the same being the Ireland Mill road to Strong's causeway, thence along Strong's causeway to Flushing creek, thence along said Flushing creek and said boundary line between the second and third wards, in a southerly direction to the boundary between the third and fourth wards of said borough of Queens, thence easterly along the said boundary line between the third and fourth wards of the borough of Queens to Grand avenue, thence southerly along Grand avenue to Hillside avenue, thence westerly along Hillside avenue to Bergen

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Congressional districts.

L. 1911, ch. 890.

avenue, thence southerly along Bergen avenue to Fulton street, thence easterly along Fulton street to Old Country road, thence southeasterly along Old Country road to Farmers avenue, thence southerly along Farmers avenue to Central avenue, thence southeasterly along Central avenue to the point or place of beginning in the boundary line between the county of Queens and the county of Nassau.

Third district. The third congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of East river and North Eleventh street, thence along North Eleventh street to Berry street, to North Twelfth street, to Union avenue, to Frost street, to Lorimer street, to Broadway, to Walton street, to Throop avenue, to Lorimer street, to Harrison avenue, to Flushing avenue, to Broadway, to De Kalb avenue, to Hamburg avenue, to Stanhope street, to the boundary line of Kings and Queens counties, thence along said boundary line to Newtown creek; thence through the waters of Newtown creek to East river; through the waters of the East river to the point of beginning. (*Amended by L. 1917, ch. 797.*)

Fourth district. The fourth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of New York bay and Sixty-third street, thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue or parkway, to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue or place, to Fourth avenue, to Bergen street, to Boerum place, to Dean street, to Court street, to Amity street, to Clinton street, to Warren street, to Columbia street, to Congress street, to the waters of Buttermilk channel and East river; thence through the waters of Buttermilk channel to the waters of New York bay; thence through the waters of New York bay to the point of beginning. (*Amended by L. 1917, ch. 797.*)

Fifth district. The fifth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Bergen street and Nevine street, thence along Nevine street to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue, to De Kalb avenue, to Washington park or Cumberland street, to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Lafayette avenue, to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue or Washington avenue, to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C or Avenue C west, to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-first street, to Thirteenth avenue, to Fortieth street, to Twelfth avenue, to

Thirty-ninth street, to Fort Hamilton avenue or parkway, to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue or place, to Fourth avenue, to Bergen street, to the point of beginning. (*Amended by L. 1917, ch. 797.*)

Sixth district. The sixth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Nostrand avenue and Lafayette avenue, thence along Lafayette avenue to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue or Washington avenue, to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C or Avenue C west, to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue to Fifteenth street, to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue, to Parkville avenue, to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thatford avenue, to Livonia avenue, to Osborn street, to Dumont avenue, to Thatford avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to McDonough street, to Lewis avenue, to Green avenue, to Nostrand avenue, to the point of beginning. (*Amended by L. 1917, ch. 797.*)

Seventh district. The seventh congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of the waters of Buttermilk channel, East river, and Congress street, thence along Congress street to Columbia street, to Warren street, to Clinton street, to Amity street, to Court street, to Dean street, to Boerum place, to Bergen street, to Nevins street, to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue, to De Kalb avenue, to Washington park or Cumberland street, to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Flushing avenue, to Harrison avenue, to Lorimer street, to Throop avenue, to Walton street, to Broadway, to Lorimer street, to Frost street, to Union avenue, to North Twelfth street, to Berry street, to North Eleventh street, to the waters of East river; thence through the waters of East river to the waters of Buttermilk channel, to the point of beginning. (*Amended by L. 1917, ch. 797.*)

Eighth district. The eighth congressional district shall consist of that

part of the county of Kings, within and bounded by a line beginning at the intersection of Sutter avenue and Williams avenue, thence along Williams avenue to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line of Kings and Queens counties, thence southerly and westerly along said boundary line, south of Barren island, to the Atlantic ocean, thence through the waters of the Atlantic ocean to the waters of Gravesend bay; through the waters of Gravesend bay to the Narrows or New York bay; through said waters to Sixty-third street; thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue or parkway, to Thirty-ninth street, to Twelfth avenue, to Fortieth street, to Thirteenth avenue, to Forty-first street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street, to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue or Parkville avenue, to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thatford avenue, to Livonia avenue, to Osborn street, to Dumont avenue, to Thatford avenue, to Sutter avenue, to the point of beginning. (*Amended by L. 1917, ch. 797.*)

Ninth district. The ninth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of the boundary line of Kings and Queens counties and Stanhope street, thence along Stanhope street to Hamburg avenue, to De Kalb avenue, to Broadway, to Hopkinson avenue, to McDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line of Kings and Queens counties, thence northerly and westerly along said boundary line of said counties, to the point where said line is intersected by the center line of Atlantic avenue; thence along Atlantic avenue, in the county of Queens, to Morris avenue, to Rockaway plank road, to Bergen landing road, to Van Wyck avenue, to Newtown road, to the boundary line of the second and fourth wards in the said county, to the boundary line of Kings and Queens counties;

thence westerly and northerly along said line to the point of beginning. (*Amended by L. 1911, ch. 890 and L. 1917, ch. 797.*)

Tenth district. Then tenth congressional district shall consist of that part of the county of Kings, within and bounded by a line beginning at the intersection of Nostrand avenue and Flushing avenue, thence along Flushing avenue to Broadway, to Hopkinson avenue, to McDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to McDonough street, to Lewis avenue, to Green avenue, to Nostrand avenue, to the point of beginning. (*Amended by L. 1911, ch. 890 and L. 1917, ch. 797.*)

Eleventh district. Richmond county, Governor's island, Bedloe's island, Ellis island and that portion of the first assembly district of the county of New York bounded on the northwest by Clarkson street, along Clarkson street to Carmine street, along Carmine street to Sixth avenue, along Sixth avenue to West Third street, along West Third street to Sullivan street, along Sullivan street to Canal street, along Canal street to Broadway, along Broadway to Worth street, along Worth street to Park row, along Park row to North William street, along North William street and William street to Beaver street, along Beaver street to Broadway, along Broadway and Whitehall street to the East river and along the East river and the Hudson or North river to Clarkson street, the point or place of beginning; that portion of the second assembly district of the county of New York bounded on the northwest by Park row and East Broadway, to Catherine street, along Catherine street to Henry street, thence along Henry street to Market street; on the northeast by Market street to the East river; on the east by the East river; on the south by the East river; on the southwest by Whitehall street and Broadway, from the East river to Beaver street, along Beaver street to William street, and on the west by William street, along William street to North William street, along North William street to Park row and along Park row to the point or place of beginning; that portion of the third assembly district of the county of New York bounded on the north by Canal street; on the east by Chrystie street to Division street, along Division street to Catherine street, along Catherine street to East Broadway, to Chatham square, to Worth street; on the south by Worth street, and on the west by Broadway; that portion of the eighth assembly district of the county of New York bounded on the north by Canal street to Division street; on the southeast by Division street to Market street, along Market street to Henry street, along Henry street to Catherine street, along Catherine street to Division street, along Division street to Chrystie street, and on the west by Chrystie street; that portion of the fifth assembly district of the county of New York bounded on the northwest by Christopher

street; on the northeast by Bleecker street; on the southeast by Carmine street, along Carmine street to Clarkson street, along Clarkson street to the North river; on the west by the North river, shall compose the eleventh district. The boundaries of said eleventh district are as follows: All of Richmond county, Governor's island, Bedloe's island and Ellis island and that portion of New York county beginning at Christopher street and North river; northeast along Christopher street to Bleecker street, thence southeast along Bleecker street to Carmine street, thence northeast along Carmine street to Sixth avenue, thence northerly along Sixth avenue to West Third street, thence easterly along West Third street to Sullivan street, thence southerly along Sullivan street to Canal street, thence easterly along Canal street to Division street, thence southwest along Division street to Market street, thence southeast along Market street to the East river, thence southwest along the East river to the North river, and northwest along the North river to the point or place of beginning.

Twelfth district. The fourth assembly district of the county of New York; that portion of the second assembly district of the county of New York bounded on the northwest by Henry street, to Clinton street, along Clinton street to Grand street, along Grand street to Gouverneur street, along Gouverneur street to Madison street, along Madison street to Montgomery street, along Montgomery street to Cherry street, along Cherry street to Clinton street, along Clinton street to the East river, along the East river to Market street, along Market street to Henry street; that portion of the sixth assembly district of the county of New York bounded on the north by East Fourth street; on the east by the East river; on the south by Stanton street; on the west by Pitt street and Avenue C and that portion of the eighth assembly district of the county of New York bounded on the north by Stanton street; on the east by Clinton street; on the southeast by Henry street to Market street, along Market street to Division street, along Division street to Essex street; on the west by Essex street to Stanton street, shall compose the twelfth district. The boundaries of the said twelfth district are as follows: Beginning at the East river and Market street; northwest to East Broadway; northeast along East Broadway to Essex street; northerly along Essex street to Stanton street; northeast along Stanton street to Pitt street, northerly along Pitt street and Avenue C to East Fourth street; easterly along East Fourth street to the East river, along the East river to the point or place of beginning.

Thirteenth district. That portion of the first assembly district of the county of New York bounded on the north by West Third street; on the east by Broadway; on the south by Canal street; on the west by Sullivan street; that portion of the third assembly district of the county of New York bounded on the north by Great Jones street, to Lafayette street, along Lafayette street to East Fourth street; along East Fourth

street to Second avenue; on the east by Second avenue and Chrysties street to Canal street; on the south by Canal street; on the west by Broadway; that portion of the eighth assembly district of the county of New York bounded on the north by Stanton street; on the east by Essex street; on the south by Division and Canal streets; on the west by Chrystie street; that portion of the sixth assembly district of the county of New York bounded on the north by Second street to Avenue B; along Avenue B to East Fourth street; along East Fourth street to Avenue C; on the east by Avenue C and Pitt street; on the south by Stanton street; on the west by Norfolk street, along Norfolk street to East Houston street, along East Houston street to Avenue A, along Avenue A to Second street and that portion of the tenth assembly district of the county of New York lying south of East Fourth street, shall compose the thirteenth district. The boundaries of the said thirteenth district are as follows: Beginning at West Third and Sullivan streets, easterly along West Third and Great Jones streets to Lafayette street; northerly along Lafayette street to East Fourth street; easterly along East Fourth street to Avenue C; southerly along Avenue C and Pitt street to Stanton street; westerly along Stanton street to Essex street; southerly along Essex street to Division street, to Canal street; westerly along Canal street to Sullivan street; northerly along Sullivan street to the point or place of beginning.

Fourteenth district. That portion of the third assembly district of the county of New York lying north of East Fourth street; that portion of the fifth assembly district of the county of New York bounded on the north by West Fourteenth street; on the east by Eighth avenue to Bleecker street, along Bleecker street to Christopher street, along Christopher street to West Fourth street, along West Fourth street to West Washington place, along West Washington place to Sixth avenue, along Sixth avenue to Carmine street, along Carmine street to Bleecker street, along Bleecker street to Christopher street, along Christopher street to the North river, along the North river to West Fourteenth street; that portion of the sixth assembly district of the county of New York lying north of East Fourth street; that portion of the tenth assembly district of the county of New York lying north of East Fourth street; that portion of the twelfth assembly district of the county of New York lying south of East Fourteenth street; that portion of the twenty-fifth assembly district of the county of New York lying south of West and East Fourteenth streets, shall compose the fourteenth district. The boundaries of the said fourteenth district are as follows: Beginning at West Fourteenth street and the North river, running easterly along Fourteenth street to the East river, along the East river to East Fourth street; westerly along East Fourth street to Lafayette street; southerly along Lafayette street to Great Jones street; westerly along Great Jones and Third streets to Sixth avenue; southerly along Sixth avenue to Carmine street, to Bleecker street; northwesterly

along Bleecker street to Christopher street; southwest along Christopher street to the North river and along the North river, to the point or place of beginning.

Fifteenth district. The territory included within the following boundaries shall compose the fifteenth district: Beginning at the Hudson river and West Sixty-second street, thence easterly along West Sixty-second street to Amsterdam avenue, along Amsterdam avenue to West Sixtieth street, along West Sixtieth street to Columbus avenue, along Columbus and Ninth avenues to West Fifty-fifth street, along West Fifty-fifth street to Eighth avenue, along Eighth avenue to West Thirty-eighth street, along West Thirty-eighth street to Seventh avenue, along Seventh avenue to West Fourteenth street, along West Fourteenth street to the Hudson river, and thence along the Hudson river to West Sixty-second street, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Sixteenth district. The territory included within the following boundaries shall compose the sixteenth district: All of Blackwell's island and that portion of the county of New York beginning at the East river and East Sixty-third street, and running westerly along East Sixty-third street to Third avenue, along Third avenue to East Sixty-first street, along East Sixty-first street to Lexington avenue, along Lexington avenue to East Sixty-second street, along East Sixty-second street to Park avenue, along Park and Fourth avenues to East Fourteenth street, along East Fourteenth street to the East river and along the East river to East Sixty-third street, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Seventeenth district. The territory included within the following boundaries shall compose the seventeenth district: Beginning at West Eighty-sixth street and the Hudson river; thence easterly along West Eighty-sixth street to Central Park west; along Central Park west to West Ninety-ninth street, thence across and through Central Park to Fifth avenue and East Ninety-ninth street, along East Ninety-ninth street to Lexington avenue, along Lexington avenue to East Seventy-third street, along East Seventy-third street to Third avenue, along Third avenue to East Sixty-first street, along East Sixty-first street to Lexington avenue, along Lexington avenue to East Sixty-second street, along East Sixty-second street to Park avenue, along Park and Fourth avenues to East Fourteenth street, along East Fourteenth street and West Fourteenth street to Seventh avenue, along Seventh avenue to West Thirty-eighth street, along West Thirty-eighth street to Eighth avenue, along Eighth avenue to West Fifty-fifth street, along West Fifty-fifth street to Ninth avenue, along Ninth and Columbus avenues to West Sixtieth street, along West Sixtieth street to Amsterdam avenue, along Amsterdam avenue to West Sixty-second street, along West Sixty-second street to the Hudson river and along the Hudson river to West Eighty-sixth street, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Eighteenth district. The territory included within the following boundaries shall compose the eighteenth district: Beginning at the East river and East Sixty-third street; thence westerly along East Sixty-third street to Third avenue, along Third avenue to East Seventy-third street, along East Seventy-third street to Lexington avenue, along Lexington avenue to East Ninety-ninth street, along East Ninety-ninth street to the East river and along the East river to East Sixty-third street, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Nineteenth district. All that portion of the fifteenth assembly district of the county of New York lying north of West Eighty-sixth street; that portion of the seventeenth assembly district of the county of New York lying north of West Eighty-sixth street; that portion of the nineteenth assembly district of the county of New York beginning at the intersection of West One Hundred and Twenty-fifth street and Morningside avenue east, running thence westerly along said West One Hundred and Twenty-fifth street to Riverside park and across said park to the North river, inclusive of all that portion of the last aforementioned assembly district lying south thereof; that portion of the twenty-first assembly district of the county of New York lying south of West One Hundred and Twenty-fifth street; that portion of the thirty-first assembly district of the county of New York lying south of West One Hundred and Twenty-fifth street and west of Fifth avenue; that portion of the twenty-sixth assembly district of the county of New York bounded on the north by East One Hundred and Sixteenth street; on the East by Madison avenue; on the south by East One Hundred and Tenth street; on the west by Fifth avenue, shall compose the nineteenth district. The boundaries of the said nineteenth district are as follows: Beginning at the North river, at a point opposite the westerly end of West One Hundred and Twenty-fifth street, running easterly across Riverside park into and along West One Hundred and Twenty-fifth street to Fifth avenue; southerly along Fifth avenue and across Mount Morris park, into and along Fifth avenue to East One Hundred and Sixteenth street; easterly along East One Hundred and Sixteenth street to Madison avenue; southerly along Madison avenue to East One Hundred and Tenth street; westerly along East One Hundred and Tenth street to Fifth avenue; southerly along Fifth avenue to East Ninety-ninth street; westerly across Central Park to West Ninety-ninth street and Central park west; southerly along Central park west to West Eighty-sixth street; westerly along West Eighty-sixth street to the North river and along the North river to the point or place of beginning.

Twentieth district. That portion of the twenty-fourth assembly district of the county of New York lying north of East Ninety-ninth street; that portion of the twenty-sixth assembly district of the county of New York bounded on the north by East One Hundred and Twentieth street; on the east by Park avenue to East One Hundred and Eighth street, along East One Hundred and Eighth street to Lexington avenue, along Lexing-

ton avenue to East One Hundred and Fifth street, along East One Hundred and Fifth street to Park avenue, along Park avenue to East One Hundredth street, along East One Hundredth street to Lexington avenue, along Lexington avenue to East Ninety-ninth street; south by East Ninety-ninth street; on the west by Fifth avenue to East One Hundred and Tenth street, along East One Hundred and Tenth street to Madison avenue, along Madison avenue to East One Hundred and Sixteenth street, along East One Hundred and Sixteenth street to Fifth avenue, along Fifth avenue to East One Hundred and Twentieth street; Ward's island and Randall's island and that portion of the twenty-eighth assembly district of the county of New York south of East One Hundred and Eighteenth street; that portion of the thirtieth assembly district of the county of New York bounded on the north by East One Hundred and Eighteenth street; east by Second avenue; south by East One Hundred and Seventeenth street; west by Third avenue; and in addition that portion of the last aforementioned assembly district bounded on the north by East One Hundred and Seventeenth street; on the east by the East river; on the south by East One Hundred and Sixteenth street to Pleasant avenue, along Pleasant avenue to East One Hundred and Fifteenth street, along East One Hundred and Fifteenth street to Second avenue; on the west by Second avenue, shall compose the twentieth district. The boundaries of the said twentieth district are as follows: All of Ward's island and Randall's island and that portion of New York county beginning at the intersection of Fifth avenue and East One Hundred and Twentieth street, along East One Hundred and Twentieth street to Park avenue; southerly on Park avenue to East One Hundred and Eighteenth street; easterly along East One Hundred and Eighteenth street to Second avenue; southerly along Second avenue to East One Hundred and Seventeenth street; easterly along East One Hundred and Seventeenth street to the East river, along the East river to East Ninety-ninth street; westerly along East Ninety-ninth street to Fifth avenue; northerly along Fifth avenue to East One Hundred and Tenth street; easterly along East One Hundred and Tenth street to Madison avenue; northerly along Madison avenue to East One Hundred and Sixteenth street; westerly along East One Hundred and Sixteenth street to Fifth avenue; northerly along Fifth avenue to East One Hundred and Twentieth street, the point or place of beginning.

Twenty-first district. The territory included within the following boundaries shall compose the twenty-first district: That portion of the county of New York beginning at the intersection of Fifth avenue and West One Hundred and Twenty-fifth street and running thence westerly along West One Hundred and Twenty-fifth street to the Hudson river, and thence along the Hudson river to Spuyten Duyvil creek, thence through Spuyten Duyvil creek and the Harlem river, and along the boundary line between New York and Bronx counties to Eighth avenue; thence southerly along Eighth avenue to West One Hundred and Forty-

fifth street, along West One Hundred and Forty-fifth street to the Harlem river and along the Harlem river to Fifth avenue, and along Fifth avenue to West One Hundred and Twenty-fifth street, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Twenty-second district. The territory included within the following boundaries shall compose the twenty-second district: North Brother's island, South Brother's island, Riker's island, and that portion of the county of New York, beginning at the Harlem river and East One Hundred and Seventeenth street, and thence westerly along East One Hundred and seventeenth street to Second avenue, along Second avenue to East One Hundred and Eighteenth street, along East One Hundred and Eighteenth street to Park avenue, along Park avenue to East One Hundred and Twentieth street, along East One Hundred and Twentieth street to Fifth avenue, thence through Mount Morris park and along Fifth avenue to the Harlem river, and along the Harlem river to West One Hundred and Forty-fifth street, along West One Hundred and Forty-fifth street to Eighth avenue, along Eighth avenue to the Harlem river, thence along the Harlem river to East One Hundred and Seventeenth street, the point or place of beginning; and that portion of the county of Bronx beginning at Jerome avenue and the Harlem river, thence along Jerome avenue to East One Hundred and Sixty-first street, and along East One Hundred and Sixty-first street to Melrose avenue, along Melrose avenue to East One Hundred and Fifty-seventh street, along East One Hundred and Fifty-seventh street to Third avenue, along Third avenue to East One Hundred and Fifty-sixth street, along East One Hundred and Fifty-sixth street to Saint Ann's avenue, along Saint Ann's avenue to East One Hundred and Forty-ninth street, along East One Hundred and Forty-ninth street to the East river, thence along the East river, Bronx kills and the Harlem river to Jerome avenue, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Twenty-third district. The territory within the following boundaries shall compose the twenty-third district: That portion of Bronx county beginning at the Harlem river and Jerome avenue, thence along Jerome avenue to East One Hundred and Sixty-first street, along East One Hundred and Sixty-first street to Melrose avenue, along Melrose avenue to East One Hundred and Fifty-seventh street, along East One Hundred and Fifty-seventh street to Third avenue, along Third avenue to East One Hundred and Fifty-sixth street, along East One Hundred and Fifty-sixth street to Saint Ann's avenue, along Saint Ann's avenue to East One Hundred and Forty-ninth street, along East One Hundred and Forty-ninth street to Prospect avenue, along Prospect avenue to Freeman street, along Freeman street to Southern boulevard, along Southern boulevard to Pelham avenue, along Pelham avenue to Bronx river, along the Bronx river to the city line, along the city line to the Hudson river, along the Hudson river to Spuyten Duyvil creek, thence through Spuyten Duyvil

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creek to the Harlem river, and along the line separating New York from Bronx counties to Jerome avenue, the point or place of beginning. (*Amended by L. 1917, ch. 799.*)

Twenty-fourth district. City island, Hunter's island, Hart's island, Twin island, High island, Middle Reef island, Rat island, The Bluezes and Chimney Sweep, that part of the thirty-second assembly district in the county of New York bounded on the north by the boundary line between the city of New York and the city of Mount Vernon, along said boundary line to Long Island sound, along Long Island sound to the East river, to East One Hundred and Forty-ninth street, along East One Hundred and Forty-ninth street to Prospect avenue, along Prospect avenue to Freeman avenue, along Freeman avenue to Southern boulevard, along Southern boulevard to Pelham avenue, along Pelham avenue to Bronx river, along the Bronx river to the boundary line between the city of New York and the city of Mount Vernon, and that portion of the county of Westchester containing the city of Yonkers, the city of Mount Vernon, the town of Eastchester and the town of Pelham, shall compose the twenty-fourth district. The boundaries of the said twenty-fourth district are as follows: All of City island, Hunter's island, Hart's island, Twin island, Middle Reef island, Rat island, The Bluezes and Chimney Sweep and beginning at the Bronx river at the intersection of said river and the boundary line between the city of New York and the city of Yonkers, running westerly along said boundary line between the city of New York and the city of Yonkers, to the Hudson river, along the Hudson river northerly to the boundary lines of the city of Yonkers and the town of Greenburg; easterly along the said boundary line to the point where said boundary line meets the boundary lines between the towns of Greenburg, Scarsdale and Eastchester, thence southeast along the boundary line between the towns of Scarsdale and Eastchester; southerly along the boundary line between the town of Eastchester and the city of New Rochelle, and along said boundary line to the point where said boundary line meets the boundary line of the city of Mount Vernon and the town of Pelham, and along the boundary line between the city of New Rochelle and the town of Pelham to Long Island sound, to the East river, along the East river to East One Hundred and Forty-ninth street, in the borough of the Bronx; northwesterly along East One Hundred and Forty-ninth street to Prospect avenue; northerly along Prospect avenue to Freeman avenue; northeasterly on Freeman avenue to Southern boulevard; northerly through Southern boulevard to Pelham avenue; easterly on Pelham avenue to the Bronx river, along the Bronx river to the intersecting boundary line of the city of New York and the city of Yonkers, the point or place of beginning.

Twenty-fifth district. The county of Rockland and the county of Westchester, except that portion lying within the city of Yonkers, the city of Mount Vernon, the town of Eastchester and the town of Pelham as at present constituted, shall compose the twenty-fifth district.

Twenty-sixth district. The counties of Orange, Putnam and Dutchess shall compose the twenty-sixth district.

Twenty-seventh district. The counties of Sullivan, Ulster, Greene, Columbia and Schoharie shall compose the twenty-seventh district.

Twenty-eighth district. The county of Albany, and the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth wards of the city of Troy, as now constituted, shall compose the twenty-eighth district.

Twenty-ninth district. All of the county of Rensselaer, except the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth wards of the city of Troy, as now constituted, the counties of Washington, Saratoga and Warren shall compose the twenty-ninth district.

Thirtieth district. The counties of Schenectady, Montgomery, Fulton and Hamilton shall compose the thirtieth district.

Thirty-first district. The counties of Essex, Clinton, Franklin and Saint Lawrence shall compose the thirty-first district.

Thirty-second district. The counties of Jefferson, Lewis, Oswego and Madison shall compose the thirty-second district.

Thirty-third district. The counties of Oneida and Herkimer shall compose the thirty-third district.

Thirty-fourth district. The counties of Otsego, Delaware, Broome and Chenango shall compose the thirty-fourth district.

Thirty-fifth district. The counties of Onondaga and Cortland shall compose the thirty-fifth district.

Thirty-sixth district. The counties of Cayuga, Wayne, Seneca, Yates and Ontario shall compose the thirty-sixth district.

Thirty-seventh district. The counties of Tompkins, Tioga, Chemung, Schuyler and Steuben shall compose the thirty-seventh district.

Thirty-eighth district. The first, second, third and fourth assembly districts of the county of Monroe, as now constituted, shall compose the thirty-eighth district.

Thirty-ninth district. The fifth assembly district of the county of Monroe, as now constituted, and the counties of Orleans, Genesee, Wyoming and Livingston, shall constitute the thirty-ninth district.

Fortieth district. The county of Niagara, and that part of the county of Erie comprising the towns of Grand Island, Tonawanda, the city of Tonawanda, and the twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth wards of the city of Buffalo, as now constituted, shall compose the fortieth district.

Forty-first district. That part of the county of Erie comprising the towns of Alden, Amherst, Cheektowaga, Clarence, Elma, Lancaster, Marilla and Newstead, and the sixth, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-sixth and twenty-seventh wards of the city of Buffalo, as now constituted, shall compose the forty-first district.

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Forty-second district. That part of the county of Erie comprising the towns of Aurora, Boston, Brant, Colden, Collins, Concord, East Hamburg, Eden, Evans, Hamburg, Holland, North Collins, Sardinia, Wales and West Seneca, the city of Lackawanna, and the first, second, third, fourth, fifth, seventh, eighth, ninth, tenth, and eleventh wards of the city of Buffalo, as now constituted, shall compose the forty-second district.

Forty-third district. The counties of Chautauqua, Cattaraugus and Allegany shall compose the forty-third district.

§ 2. *Assembly districts, towns, wards and election districts defined.* The words "assembly district" when used in this act refer to assembly districts as at present constituted. Whenever the word "town," "towns," "ward," "wards," "election district" or "election districts" is used in this act it shall be understood to refer to the town, towns, ward, wards, election district or election districts as constituted at the time of the passage of his act.

§ 3. *Repeal.*—All acts or parts of acts inconsistent with this act are hereby repealed.

ARTICLE VIII.

(Former article 8 repealed and new article added by L. 1916, ch. 373, in effect May 1, 1916. This entire article, as so added, was declared unconstitutional by the Court of Appeals in *Matter of Dowling*. 219 N. Y. 44, 113 N. E. 545. Repealed by L. 1917, ch. 798 and new article 8 added.)

SENATE DISTRICTS AND APPORTIONMENT OF THE MEMBERS OF ASSEMBLY OF THE STATE.

Section 120. Senate districts.

121. Apportionment of members of assembly.

122. Assembly districts.

§ 120. *Senate districts.*—The senate districts of this state from and after the time this section takes effect, shall consist as follows:

First. The first senate district shall consist of the counties of Nassau and Suffolk.

Second. The second senate district shall consist of that part of the county of Queens, within and bounded by a line, beginning at Strong causeway on Flushing creek and running thence along Flushing creek to the junction of Ireland Mill road, thence along Ireland Mill road to Lawrence street, to Bradford avenue, to Main street, to Lincoln street, to Union avenue, to Whitestone avenue, to Bayside avenue, to Little Bayside road, to Poppenhausen avenue, to Bell avenue, to Mulford avenue, to the waters of Little Neck bay, thence easterly through the waters of Little Neck bay to the boundary line of Queens and Nassau counties, thence southerly along said boundary line to the Atlantic ocean, thence westerly

through the waters of the Atlantic ocean to the boundary line of Kings and Queens counties, thence northerly along said boundary line to Woodbine street, thence along Woodbine street to Woodward avenue, to Palmetto street, to Grandview avenue, to Linden street, to Forest avenue, to Gates avenue, to Fresh Pond road, to Woodbine street, to Long Island railroad, to Woodhaven avenue, to White Pot road, to Astoria road, to North Hempstead plank road, to Lawn avenue, to the stream connecting Lawn avenue and Flushing creek, thence along said stream to its junction with Flushing creek, thence along Flushing creek to Strong causeway, the place of beginning.

Third. The third senate district shall consist of that part of the county of Queens, within and bounded by a line, beginning at Strong causeway on Flushing creek and running thence along Flushing creek to the junction of Ireland Mill road, thence along Ireland Mill road to Lawrence street, to Bradford avenue, to Main street, to Lincoln street, to Union avenue, to Whitestone avenue, to Bayside avenue, to Little Bayside road, to Poppenhausen avenue, to Bell avenue, to Mulford avenue, to the waters of Little Neck bay, thence northerly, westerly and southerly through the waters of Little Neck bay, Long Island sound, East river and Newtown creek to the boundary line of Kings and Queens counties, thence southerly along said boundary line to Woodbine street, thence along Woodbine street, to Woodward avenue, to Palmetto street, to Grandview avenue, to Linden street, to Forest avenue, to Gates avenue, to Fresh Pond road, to Woodbine street, to Long Island railroad, to Woodhaven avenue, to White Pot road, to Astoria road, to North Hempstead plank road, to Lawn avenue, to the stream connecting Lawn avenue and Flushing creek, thence along said stream to its junction with Flushing creek, thence along Flushing creek to Strong causeway, the place of beginning.

Fourth. The fourth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the intersection of Sutter avenue and Williams avenue and running thence along Williams avenue to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line of Kings and Queens counties, then southerly and westerly, along said boundary line, south of Barren island, to the Atlantic ocean, thence westerly and northerly through the waters of Atlantic ocean, Gravesend bay, the Narrows and New York bay to the junction of Sixty-third street, thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue (or parkway), to Thirty-ninth street, to Twelfth avenue, to Fortieth street, to Thirteenth avenue, to Forty-first street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street, to Sixteenth avenue,

to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue (or Parkville avenue), to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thatford avenue, to Livonia avenue, to Osborn street, to Dumont avenue, to Thatford avenue, to Sutter avenue, and thence along Sutter avenue to Williams avenue the place of beginning.

Fifth. The fifth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the junction of New York bay and Sixty-third street, and running thence along Sixty-third street to Third avenue, to Sixty-fifth street, to Sixth avenue, to Forty-ninth street, to Seventh avenue, to Fortieth street, to Fort Hamilton avenue (or parkway), to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue, to Fourth avenue, to Bergen street, to Boerum place, to Dean street, to Court street, to Amity street, to Clinton street, to Warren street, to Columbia street, to Congress street, to the waters of the East river thence southerly through the waters of the East river, Buttermilk channel and New York bay to the place of beginning.

Sixth. The sixth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the intersection of Bergen street and Nevins street, and running thence along Nevins street to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue, to DeKalb avenue, to Washington park (or Cumberland street), to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Lafayette avenue, to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue (or Washington avenue), to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C (or Avenue C west), to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-first street, to Thirteenth avenue, to Fortieth street, to Twelfth avenue, to Thirty-ninth street, to Fort Hamilton avenue (or parkway), to Gravesend avenue, to Terrace place, to Eleventh avenue, to Seventeenth street, to Terrace place, to Prospect avenue, to Fourth avenue, to Garfield place, to Fifth avenue, to Saint Mark's avenue to Fourth avenue, to Bergen street and thence along Bergen street to the place of beginning.

Seventh. The seventh senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the inter-

section of Nostrand avenue and Flushing avenue, and running thence along Flushing avenue to Broadway, to Hopkinson avenue, to MacDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to MacDonough street, to Lewis avenue, to Greene avenue, to Nostrand avenue and thence along Nostrand avenue to the place of beginning.

Eighth. The eighth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of Nostrand avenue and Lafayette avenue and running thence along Lafayette avenue to Bedford avenue, to Dean street, to New York avenue, to Park place, to Nostrand avenue, to Eastern parkway, to New York avenue, to Sterling street, to Flatbush avenue (or Washington avenue), to Malbone street, to Ocean avenue, to Parkside avenue, to Parade place, to Caton avenue, to Coney Island avenue, to Beverly road, to East Ninth street, to Avenue C (or Avenue C west), to West street, to Fifteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Forty-fourth street, to Fifteenth avenue, to Fiftieth street, to Sixteenth avenue, to Forty-ninth street, to Nineteenth avenue, to Forty-seventh street, to Washington avenue (or Parkville avenue), to Gravesend avenue, to Foster avenue, to East Seventeenth street, to Avenue I, to Flatbush avenue, to East Thirty-fourth street, to Avenue J, to Schenectady avenue, to Glenwood road, to East Forty-sixth street, to Farragut road, to Schenectady avenue, to Clarendon road, to Ralph avenue, to Church avenue, to East Ninety-first street, to Linden avenue, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Lott avenue, to Thatford avenue, to Livonia avenue, to Osborn street, to Dumont avenue, to Thatford avenue, to Sutter avenue, to Howard avenue, to Pacific street, to Ralph avenue, to Atlantic avenue, to Utica avenue, to Pacific street, to Schenectady avenue, to Fulton street, to Sumner avenue, to MacDonough street, to Lewis avenue, to Greene avenue, to Nostrand avenue and thence along Nostrand avenue to the place of beginning.

Ninth. The ninth senate district shall consist of that part of the county of Kings within and bounded by a line, beginning at the intersection of the boundary line of Kings and Queens counties and Stanhope street and running thence along Stanhope street to Hamburg avenue, to De Kalb avenue, to Broadway, to Hopkinson avenue, to MacDonough street, to Broadway, to Jamaica avenue, to Alabama avenue, to Atlantic avenue, to Williams avenue, to Blake avenue, to Pennsylvania avenue, to Hegeman avenue, to New Jersey avenue, to Vienna avenue, to Pennsylvania avenue, to the waters of Jamaica bay, thence southerly through the waters of Jamaica bay to a point east of Duck Point marsh, thence southerly and easterly to the boundary line between Kings and Queens counties, thence northerly and westerly along said boundary line to the place of beginning.

Tenth. The tenth senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the junction of the East river and North Eleventh street, and running thence along North Eleventh street to Berry street, to North Twelfth street, to Union avenue, to Frost street, to Lorimer street, to Broadway, to Walton street, to Throop avenue, to Lorimer street, to Harrison avenue, to Flushing avenue, to Broadway, to De Kalb avenue, to Hamburg avenue, to Stanhope street, to the boundary line of Kings and Queens counties, thence along said boundary line to Newtown creek, thence northerly, westerly and southerly, through the waters of Newtown creek and the East river to the place of beginning.

Eleventh. The eleventh senate district shall consist of that part of the county of Kings, within and bounded by a line, beginning at the junction of Congress street and Buttermilk channel and running thence along Congress street to Columbia street, to Warren street, to Clinton street, to Amity street, to Court street, to Dean street, to Boerum place, to Bergen street, to Nevins street, to Atlantic avenue, to Bond street, to Fulton street, to Hudson avenue, to De Kalb avenue, to Washington park (or Cumberland street), to Myrtle avenue, to Spencer street, to Willoughby avenue, to Nostrand avenue, to Flushing avenue, to Harrison avenue, to Lorimer street, to Throop avenue, to Walton street, to Broadway, to Lorimer street, to Frost street, to Union avenue, to North Twelfth street, to Berry street, to North Eleventh street, to the waters of the East river, thence southerly through the waters of the East river and Buttermilk channel to the place of beginning.

Twelfth. The twelfth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West Tenth street and running thence along West Tenth street to Greenwich street, to Charles street, to Bleecker street, to Christopher street, to West Fourth street, to West Washington place, to Sixth avenue, to West Third street, to Broadway, to East Fourth street, to Second avenue, to East Houston street, to Ludlow street, to Broome street, to Essex street, to Grand street, to Gouverneur street, to Cherry street, to Scammel street, to Water street, to Gouverneur slip, to the East river, thence through the waters of the East river and Hudson river to the place of beginning and including Governor's, Ellis, Bedloe's and Oyster islands.

Thirteenth. The thirteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West Sixty-third street and running thence along West Sixty-third street to Columbus avenue, to Ninth avenue, to West Fifty-seventh street, to Eighth avenue, to West Forty-fourth street, to Seventh avenue, to West Forty-third street, to Eighth avenue, to West Thirty-seventh street, to Seventh avenue, to West Fourteenth street, to Eighth avenue, to Bleecker street, to Bank street, to West

Fourth street, to West Eleventh street, to Bleecker street, to Charles street, to Greenwich street, to West Tenth street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Fourteenth. The fourteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East Eighteenth street and running thence along East Eighteenth street to Avenue B, to East Seventeenth street, to First avenue, to East Sixteenth street, to Third avenue, to East fifteenth street, to Irving place, to East Fourteenth street, to Fourth avenue, to Astor place, to Broadway, to East Fourth street, to Second avenue, to East Houston street, to Ludlow street, to Broome street, to Essex street, to Grand street, to Gouverneur street, to Cherry street, to Scammel street, to Water street, to Gouverneur slip, to the East river, thence through the waters of the East river to the place of beginning.

Fifteenth. The fifteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West One Hundred and Sixteenth street and running thence along West One Hundred and Sixteenth street, to Broadway, to West One Hundred and Fourteenth street, to Amsterdam avenue, to West One Hundred and Sixteenth street, to Columbus avenue (or Morningside avenue east), to West One Hundred and Nineteenth street, to Saint Nicholas avenue, to West One Hundred and Eighteenth street, to Seventh avenue, to West One Hundred and Tenth street, to Eighth avenue (or Central park west), to West Sixty-second street, to Broadway, to Eighth avenue (or Central park west), to West Fifty-eighth street, to Ninth avenue, to Columbus avenue, to West Sixty-third street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Sixteenth. The sixteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East Eighty-first street and running thence along East Eighty-first street to East End avenue, to East Eighty-fourth street, to Avenue A, to East Seventy-seventh street, to Third avenue, to East Seventy-sixth street, to Lexington avenue, to East Seventy-fourth street, to Third avenue, to East Fifty-second street, to Lexington avenue, to East Fortieth street, to Third avenue, to East Thirty-fourth street, to Lexington avenue, to East Twenty-second street, to Third avenue, to East Sixteenth street, to First avenue, to East Seventeenth street, to Avenue B, to East Eighteenth street, to the East river, thence through the waters of the East river to the place of beginning and including Blackwell's island.

Seventeenth. The seventeenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the intersection of Seventh avenue and West One Hundred and Eighteenth street and running thence along West One Hundred and Eighteenth street

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to East One Hundred and Eighteenth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Seventy-ninth street, to Third avenue, to East Seventy-sixth street, to Lexington avenue, to East Seventy-fourth street, to Third avenue, to East Fifty-second street, to Lexington avenue, to East Fortieth street, to Third avenue, to East Thirty-fourth street, to Lexington avenue, to East Twenty-second street, to Third avenue, to East Fifteenth street, to Irving place, to East Fourteenth street, to Fourth avenue, to Astor place, to Broadway, to West Third street, to Sixth avenue, to West Washington place, to West Fourth street, to Christopher street, to Bleecker street, to West Eleventh street, to West Fourth street, to Bank street, to Bleecker street, to Eighth avenue, to West Fourteenth street, to Seventh avenue, to West Thirty-seventh street, to Eighth avenue, to West Forty-third street, to Seventh avenue, to West Forty-fourth street, to Eighth avenue, to West Fifty-seventh street, to Ninth avenue, to West Fifty-eighth street, to Eighth avenue (or Central park west), to Broadway, to West Sixty-second street, to Eighth avenue (to Central park west), to West One Hundred and Tenth street, to Seventh avenue, and thence along Seventh avenue to the place of beginning.

Eighteenth. The eighteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the East river and East One Hundred and Fifteenth street and running thence along East One Hundred and Fifteenth street to Second avenue, to East One Hundred and Eighteenth street, to Third avenue, to East One Hundred and Seventeenth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Seventy-ninth street, to Third avenue, to East Seventy-seventh street, to Avenue A, to East Eighty-fourth street, to East End avenue, to East Eighty-first street, to the East river, thence through the waters of the East river to the place of beginning and including Ward's island.

Nineteenth. The nineteenth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West One Hundred and Thirty-sixth street and running thence along West One Hundred and Thirty-sixth street to Lenox avenue, to West One Hundred and Thirty-seventh street, to East One Hundred and Thirty-seventh street, to Madison avenue, to East One Hundred and Thirty-fourth street, to the Harlem river, thence through the waters of the Harlem river, Bronx kills, East river and Little Hell Gate to the junction of East One Hundred and Fifteenth street, thence along East One Hundred and Fifteenth street to Second avenue, to East One Hundred and Eighteenth street, to Third avenue, to East One Hundred and Seventeenth street, to Park avenue, to East One Hundred and Eighteenth street, to West One Hundred and Eighteenth street, to Saint Nicholas avenue, to West One Hundred and Nineteenth street, to Columbus avenue (or Morningside avenue east), to West One Hundred and Sixteenth street, to Amsterdam avenue, to West One Hundred and Fourteenth street,

to Broadway, to West One Hundred and Sixteenth street, to the Hudson river, thence through the waters of the Hudson river to the place of beginning and including Randall's island and Sunken meadow.

Twentieth. The twentieth senate district shall consist of that part of the county of New York within and bounded by a line, beginning at the junction of the Hudson river and West One Hundred and Thirty-sixth street and running thence along West One Hundred and Thirty-sixth street to Lenox avenue, to West One Hundred and Thirty-seventh street, to East One Hundred and Thirty-seventh street, to Madison avenue, to East One Hundred and Thirty-fourth street, to the junction of the Harlem river, thence easterly through the waters of the Harlem river to the boundary line between New York and Bronx counties, thence northerly and westerly along said boundary line to the Hudson river, thence through the waters of the Hudson river to the place of beginning.

Twenty-first. The twenty-first senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of the East river and East One Hundred and Fortieth street and running thence along East One Hundred and Fortieth street, to Locust avenue, to East One Hundred and Forty-first street, to Jackson avenue, to East One Hundred and Forty-fifth street, to Trinity avenue, to East One Hundred and Forty-ninth street, to Saint Ann's avenue, to East One Hundred and Fifty-sixth street, to Cauldwell avenue, to East One Hundred and Sixty-fourth street, to Boston road, to Third avenue, to East One Hundred and Sixty-sixth street, to Washington avenue, to East One Hundred and Seventy-fifth street, to Park avenue, to East One Hundred and Seventy-seventh street, to East One Hundred and Seventy-sixth street, to Anthony avenue, to East Tremont avenue, to Mount Hope avenue, to East One Hundred and Seventy-sixth street, to Morris avenue, to Mount Hope place, to Walton avenue, to East One Hundred and Seventy-seventh street, to West One Hundred and Seventy-seventh street, to West Tremont avenue, to Macombs road, to Featherbed lane, to Aqueduct avenue, to West One Hundred and Seventy-second street, to the Harlem river, thence through the waters of the Harlem river, Bronx kills and East river to the place of beginning.

Twenty-second. The twenty-second senate district shall consist of that part of the county of Bronx within and bounded by a line, beginning at the junction of the East river and East One Hundred and Fortieth street and running thence along East One Hundred and Fortieth street to Locust avenue, to East One Hundred and Forty-first street, to Jackson avenue, to East One Hundred and Forty-fifth street, to Trinity avenue, to East One Hundred and Forty-ninth street, to Saint Ann's avenue, to East One Hundred and Fifty-sixth street, to Cauldwell avenue, to East One Hundred and Sixty-fourth street, to Boston road, to Third avenue, to East One Hundred and Sixty-sixth street, to Washington avenue, to East One Hundred and Seventy-fifth street, to Arthur avenue, to Crotona park

north, to East One Hundred and Seventy-fifth street, to Hoe avenue, to East One Hundred and Seventy-fourth street, to the Bronx river, thence through the waters of the Bronx and East rivers to the place of beginning, and including Riker's, South Brothers and North Brothers islands.

Twenty-third. The twenty-third senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at the junction of West One Hundred and Seventy-second street and the Harlem river and running thence westerly through the waters of the Harlem river to the boundary line between New York and Bronx counties, thence northerly and westerly along said boundary line to the Hudson river, thence northerly through the waters of the Hudson river to the northerly boundary line of the city of New York, thence along the northerly and easterly boundary lines of the city of New York to the East river, thence through the waters of the East and Bronx rivers to East One Hundred and Seventy-fourth street, thence along East One Hundred and Seventy-fourth street to Hoe avenue, to East One Hundred and Seventy-fifth street, to Crotona park north, to Arthur avenue, to East One Hundred and Seventy-fifth street, to Park avenue, to East One Hundred and seventy-seventh street, to East One Hundred and Seventy-sixth street, to Anthony avenue, to East Tremont avenue, to Mount Hope avenue, to East One Hundred and Seventy-sixth street, to Morris avenue, to Mount Hope place, to Walton avenue, to East One Hundred and Seventy-seventh street, to West One Hundred and Seventy-seventh street, to West Tremont avenue, to Macombs road, to Featherbed lane, to Aqueduct avenue, to West One Hundred and Seventy-second street, thence along West One Hundred and Seventy-second street to the place of beginning.

Twenty-fourth. The twenty-fourth senate district shall consist of the counties of Richmond and Rockland.

Twenty-fifth. The twenty-fifth senate district shall consist of that part of the county of Westchester comprising the towns of Bedford, Eastchester, Harrison, Lewisboro, Mamaroneck, New Castle, North Castle, North Salem, Pelham, Poundridge, Rye, Scarsdale, Somers, and Yorktown; together with the cities of Mount Vernon, New Rochelle, White Plains, and that part of the city of Yonkers within and bounded by a line, beginning at the intersection of Sherwood avenue and the westerly boundary line of the city of Mount Vernon and running thence along Sherwood avenue to the Bronx river road, to Yonkers avenue, to Vernon place, to Leonard place, to Richfield place, to Yonkers avenue, to Kimball avenue, to the northerly boundary line of the city of New York, thence easterly along said boundary line to the easterly boundary line of the city of Yonkers, thence northerly along said boundary line to the place of beginning.

Twenty-sixth. The twenty-sixth senate district shall consist of that part of the county of Westchester comprising the towns of Greenburgh, Mount Pleasant, Ossining and Cortland; together with all the remainder

of the city of Yonkers not hereinbefore described as a part of the twenty-fifth senate district.

Twenty-seventh. The twenty-seventh senate district shall consist of the counties of Orange and Sullivan.

Twenty-eighth. The twenty-eighth senate district shall consist of the counties of Putnam, Dutchess and Columbia.

Twenty-ninth. The twenty-ninth senate district shall consist of the counties of Ulster, Greene and Delaware.

Thirtieth. The thirtieth senate district shall consist of the county of Albany.

Thirty-first. The thirty-first senate district shall consist of the county of Rensselaer.

Thirty-second. The thirty-second senate district shall consist of the counties of Saratoga and Schenectady.

Thirty-third. The thirty-third senate district shall consist of the counties of Clinton, Essex, Warren and Washington.

Thirty-fourth. The thirty-fourth senate district shall consist of the counties of Saint Lawrence and Franklin.

Thirty-fifth. The thirty-fifth senate district shall consist of the counties of Lewis, Herkimer, Hamilton and Fulton.

Thirty-sixth. The thirty-sixth senate district shall consist of the county of Oneida.

Thirty-seventh. The thirty-seventh senate district shall consist of the counties of Jefferson and Oswego.

Thirty-eighth. The thirty-eighth senate district shall consist of the county of Onondaga.

Thirty-ninth. The thirty-ninth senate district shall consist of the counties of Madison, Otsego, Montgomery and Schoharie.

Fortieth. The fortieth senate district shall consist of the counties of Cortland, Broome and Chenango.

Forty-first. The forty-first senate district shall consist of the counties of Schuyler, Tompkins, Chemung and Tioga.

Forty-second. The forty-second senate district shall consist of the counties of Cayuga, Seneca and Wayne.

Forty-third. The forty-third senate district shall consist of the counties of Ontario, Yates and Steuben.

Forty-fourth. The forty-fourth senate district shall consist of the counties of Genesee, Wyoming, Allegany and Livingston.

Forty-fifth. The forty-fifth senate district shall consist of that part of the county of Monroe comprising the towns of Webster, Irondequoit, Penfield, Perinton, Pittsford, Brighton, Henrietta, Rush and Mendon; together with the fourth, sixth, seventh, eighth, twelfth, the third and fourth election districts and that part of the second election district bounded by the Erie canal, Averill avenue, South avenue, Byron street and Clinton avenue south, of the thirteenth, the sixteenth, seventeenth (except-

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ing that part of the first election district bounded by Avenue A, Gladys street, Nillson street and Harris street), the eighteenth, twenty-first and twenty-second wards of the city of Rochester, constituted as shown on maps accompanying the report of the secretary of state of the enumeration of inhabitants nineteen hundred and fifteen.

Forty-sixth. The forty-sixth senate district shall consist of that part of the county of Monroe comprising the towns of Greece, Gates, Chili, Wheatland, Clarkson, Riga, Sweden, Ogden, Parma, and Hamlin; together with the first, second, third, fifth, ninth, tenth, eleventh, the first election district and that part of the second election district bounded by the Erie canal, Clinton avenue south, Byron street and South avenue, of the thirteenth, the fourteenth, fifteenth, that part of the first election district of the seventeenth, bounded by Avenue A, Gladys street, Nillson street and Harris street, the nineteenth, twentieth and twenty-third wards of the city of Rochester constituted as shown on maps accompanying the report of the secretary of state of the enumeration of inhabitants nineteen hundred and fifteen.

Forty-seventh. The forty-seventh senate district shall consist of the counties of Orleans and Niagara.

Forty-eighth. The forty-eighth senate district shall consist of that part of the county of Erie within and bounded by a line beginning at the intersection of the northerly boundary line of the city of Buffalo and Delaware avenue, and running thence along Delaware avenue to Tacoma avenue, to Tennyson avenue, to Hertel avenue, to Delaware avenue, to Scajaquada creek, thence through the waters of Scajaquada creek to Main street, thence along Main street to Riley street, to Michigan avenue, to Northampton street, to Jefferson street, to Best street, to Herman street, to High street, to Fox street, to Genesee street, to Sherman street, to Broadway, to Madison street, to William street, to Union street, to East Eagle street, to Main street, to Exchange street, to Washington street, to New York Central railroad, to Main street, to the Buffalo river, thence through the waters of the Buffalo river to Lake Erie, thence through the waters of Lake Erie and the Niagara river, along the international boundary line, to the northerly boundary line of the city of Buffalo, thence along said boundary line to the place of beginning.

Forty-ninth. The forty-ninth senate district shall consist of that part of the county of Erie within and bounded by a line, beginning at the intersection of the easterly boundary line of the city of Buffalo and East Delavan avenue and running thence along East Delavan avenue, to Northumberland avenue, to East Ferry street, to Montana avenue, to Genesee street, to New York Central belt line, to Walden avenue, to Herman street, to High street, to Fox street, to Genesee street, to Sherman street, to Broadway, to Madison street, to Williams street, to Union street, to East Eagle street, to Main street, to Exchange street, to Washington street, to New York Central railroad, to Main street, to the Buffalo river,

thence through the waters of the Buffalo river to Lake Erie, thence southerly through the waters of Lake Erie to the southerly boundary line of the city of Buffalo, thence along the said southerly and easterly boundary lines of the city of Buffalo to the place of beginning.

Fiftieth. The fiftieth senate district shall consist of that part of the county of Erie comprising the towns of Alden, Amherst, Aurora, Boston, Brant, Cheektowaga, Clarence, Colden, Collins, Concord, East Hamburg, Eden, Elma, Evans, Grand Island, Hamburg, Holland, Lancaster, Marilla, Newstead, North Collins, Sardinia, Tonawanda, Wales and West Seneca; together with the cities of Tonawanda, Lackawanna and that part of the city of Buffalo within and bounded by a line, beginning at the intersection of the northerly boundary of the city of Buffalo and Delaware avenue and running thence along Delaware avenue to Tacoma avenue, to Tennyson avenue, to Hertel avenue, to Delaware avenue, to Scajaquada creek, thence through the waters of Scajaquada creek to Main street, thence along Main street to Riley street, to Michigan avenue, to Northampton street, to Jefferson street, to Best street, to Walden avenue, to New York Central belt line, to Genesee street, to Montana avenue, to East Ferry street, to Northumberland avenue, to East Delavan avenue, to the easterly boundary line of the city of Buffalo, thence along the said easterly and northerly lines of the city of Buffalo to the place of beginning.

Fifty-first. The fifty-first senate district shall consist of the counties of Cattaraugus and Chautauqua.

§ 121. Apportionment of members of assembly.—The number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:

- In the county of Albany, three.
- In the county of Allegany, one.
- In the county of Bronx, eight.
- In the county of Broome, two.
- In the county of Cattaraugus, one.
- In the county of Cayuga, one.
- In the county of Chautauqua, two.
- In the county of Chemung, one.
- In the county of Chenango, one.
- In the county of Clinton, one.
- In the county of Columbia, one.
- In the county of Cortland, one.
- In the county of Delaware, one.
- In the county of Dutchess, two.
- In the county of Erie, eight.
- In the county of Essex, one.
- In the county of Franklin, one.
- In the county of Fulton-Hamilton, one.

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In the county of Genesee, one.
In the county of Greene, one.
In the county of Herkimer, one.
In the county of Jefferson, one.
In the county of Kings, twenty-three.
In the county of Lewis, one.
In the county of Livingston, one.
In the county of Madison, one.
In the county of Monroe, five.
In the county of Montgomery, one.
In the county of Nassau, two.
In the county of New York, twenty-three.
In the county of Niagara, two.
In the county of Oneida, three.
In the county of Onondaga, three.
In the county of Ontario, one.
In the county of Orange, two.
In the county of Orleans, one.
In the county of Oswego, one.
In the county of Otsego, one.
In the county of Putnam, one.
In the county of Queens, six.
In the county of Rensselaer, two.
In the county of Richmond, two.
In the county of Rockland, one.
In the county of Saint Lawrence, two.
In the county of Saratoga, one.
In the county of Schenectady, two.
In the county of Schoharie, one.
In the county of Schuyler, one.
In the county of Seneca, one.
In the county of Steuben, two.
In the county of Suffolk, two.
In the county of Sullivan, one.
In the county of Tioga, one.
In the county of Tompkins, one.
In the county of Ulster, one.
In the county of Warren, one.
In the county of Washington, one.
In the county of Wayne, one.
In the county of Westchester, five.
In the county of Wyoming, one.
In the county of Yates, one.

§ 122. Assembly districts.—The supervisors of each of the aforesaid

counties, which are by the provisions of this article entitled to more than one member of assembly, shall meet on the second Tuesday in June, nineteen hundred and seventeen, at the place where their last meetings were held; they shall organize by appointing one of their number as chairman, and another as secretary, and shall proceed to divide their respective counties into so many assembly districts as they are entitled respectively to members of assembly under this article; and shall thereupon make their certificates respectively, containing a description of each assembly district, specifying the number of each district and the population thereof according to the last state enumeration.

In any city comprising one or more counties, in which there is no board of supervisors, the members of the board of aldermen of said city shall constitute the board for the division of the counties in such city into assembly districts, and they shall meet at the same time and in the same manner organize, make such divisions in said counties and certificates, as boards of supervisors in other counties are required to do.

The said certificate shall be signed by a majority of such supervisors respectively, except in cities in which there is no board of supervisors and in such cities by a majority of the aldermen of said cities, and they shall cause duplicate certificates to be filed in the office of the secretary of state and the office of the clerk of their respective counties.

ARTICLE 9.

(Article amended by L. 1915, ch. 155.)

ENUMERATION OF THE INHABITANTS OF THE STATE.

Section 140. When enumeration shall be taken.

141. General powers and duties of the secretary of state.
142. Appointment of enumeration supervisors.
143. Compensation of enumeration supervisors.
144. Powers and duties of enumeration supervisors.
145. Enumeration districts.
146. Appointment and qualifications of enumerators.
147. Compensation of enumerators.
148. Interpreters.
149. Oath of enumerators and interpreters.
150. Failure of enumeration supervisors and enumerators to perform duties.
151. Removal of supervisors and enumerators and filling vacancies; amendment of enumeration.
152. Enumeration of Indians.
153. Commencement of enumeration; how enumeration made.
154. Penalty for withholding information or giving false information.
155. Penalty for enumeration supervisor, enumerator or interpreter making false enumeration.
156. Completion of enumeration; penalty for failure to make return.
157. Sheriffs and other officers to assist enumerators.

158. Certificate of secretary of state conclusive evidence.

§ 140. When enumeration shall be taken.—An enumeration of the inhabitants of this state shall be taken during the months of May and June, in the year nineteen hundred and fifteen, and in said months every tenth year thereafter. (*Amended by L. 1915, ch. 155.*)

Source of former article.—L. 1905, ch. 83.

§ 141. General powers and duties of the secretary of state.—The enumeration herein authorized and required shall be taken under the general direction and supervision of the secretary of state. He may designate a deputy or a clerk in his office to take charge of such enumeration. He may in his discretion and without examination appoint temporarily such additional clerks and assistants as in his opinion are actually necessary to properly perform the duties imposed upon him by this article, and remove them at pleasure and may fix their compensation, provided that the total amount paid therefor shall not exceed the amount appropriated and available for such purpose. The persons so appointed as such additional clerks and assistants shall be qualified to the satisfaction of the secretary of state to perform the duties required of them. The secretary of state shall:

1. Regulations. Adopt, and cause to be printed and distributed to chief enumeration supervisors and enumerators, regulations, not inconsistent with the provisions of this article, specifying in detail the methods to be followed in taking such enumeration, prescribing the duties of chief enumeration supervisors and enumeration supervisors and enumerators, and the manner of making and transmitting returns by such officers, and providing generally for the proper enforcement and the economical administration and carrying into effect of the provisions of this article.

2. Blanks and forms. Prepare and cause to be printed and forwarded to the enumeration supervisors such number of blank schedules, returns, cards, abstracts and other forms as may be required for the use of such supervisors and the enumerators in properly and accurately taking, completing and transmitting the enumeration herein authorized.

3. Instructions. Prepare and transmit to such supervisors and enumerators printed instructions and copies of this article for the information of such supervisors and the enumerators. Such instructions shall clearly and explicitly state the general principles to be applied in determining what constitutes citizenship and shall specially inform such supervisors and enumerators as to their duties relating to the enumeration of citizens and aliens.

4. Returns; tabulations. Prescribe the contents of returns and direct the manner and time of making and transmitting such returns by supervisors and enumerators, and cause such returns to be tabulated and arranged so as to show the number of inhabitants exclusive of aliens, the number of aliens, and the total number of inhabitants in each village,

town, county, city and borough of a city, of the state. He may, if he deems it advisable, cause such tabulation to be made of the inhabitants of other political subdivisions, or districts of the state and may provide for an enumeration of the inhabitants thereof for such purpose. In any city in a county containing more than one senate district, or which, in the opinion of the secretary of state, may be entitled to more than one senate district under a reapportionment, such tabulation shall show the result of such enumeration in such city, by blocks inclosed by streets or public ways. He may, in his discretion, direct the chief enumeration supervisors and enumeration supervisors to tabulate and arrange the returns submitted to them by the enumerators of their districts. He may also, if he deems it advisable, contract with any person for the tabulation of such returns.

5. Report of enumeration. Prepare and report to the legislature, on or before the fifteenth day of January next following such enumeration, a full and complete report of the result of such enumeration, tabulated and arranged as above provided.

6. Filing of report. Transmit, within ten days after the final completion of the enumeration, to the county clerk of each county to which such returns relate a certified copy of the portions of such report which relate to such county to be filed and become a record of such county clerk's office. (*Amended by L. 1915, ch. 155.*)

§ 142. Appointment of chief enumeration supervisors and enumeration supervisors.—The secretary of state shall appoint without examination, during the month of April, nineteen hundred and fifteen, and in such month in every tenth year thereafter, an enumeration supervisor for each assembly district of the state. He shall also appoint without examination, at such time one chief enumeration supervisor for the counties of New York and the Bronx, one for the counties of Kings and Queens, and one for the county of Erie. Each person so appointed shall be a citizen of the United States, a qualified voter of the district for which he is appointed and shall have resided in such district for a period of at least one year previous to his appointment. Such chief enumeration supervisor and enumeration supervisor shall take office immediately upon their appointment and shall hold office until the duties required of them by this act shall have been performed, unless sooner removed by the secretary of state. The secretary of state shall issue and deliver to such chief enumeration supervisor and enumeration supervisor a certificate of appointment, which shall be signed by him, and shall state and accurately describe the boundaries of the assembly district to which such supervisor is assigned. Such chief enumeration supervisor and enumeration supervisor shall each immediately upon receiving such certificate and before entering upon the duties of his office take and subscribe and file in the office of the secretary of state an oath of office in the form to be prescribed by the secretary

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of state, to the effect that he will perform the duties of his office to the best of his ability, that he will report to the secretary of state all inaccurate enumerations coming to his knowledge, and the incompetency of enumerators in his supervisory district, and that he will not intentionally increase, suppress or diminish the number of inhabitants enumerated by the enumerators under his supervision or in any way fraudulently or illegally alter the enumeration of the inhabitants of his district or the return and tabulation thereof made as provided in this act.

The chief enumeration supervisors appointed as herein provided shall be responsible for the proper enumeration of the inhabitants of the counties for which they were appointed, and shall possess the powers and perform the duties prescribed by the secretary of state. (*Amended by L. 1915, ch. 155.*)

§ 143. **Compensation of enumeration supervisors.**—Each enumeration supervisor shall be paid a compensation of five hundred dollars. The chief enumeration supervisor for the counties of New York and the Bronx, and such chief for the counties of Kings and Queens shall each be paid a compensation of two thousand and five hundred dollars, and such chief enumeration supervisor for the county of Erie shall be paid a compensation of two thousand dollars. Such compensation shall be paid in three equal installments by the state treasurer out of appropriations made therefor on the warrant of the comptroller drawn upon the requisition of the secretary of state. The last installment of such compensation shall not be paid until the work required to be performed by such supervisor, under the provisions of this article and the regulations of the secretary of state shall have been completed to the satisfaction of the secretary of state. If a chief enumeration supervisor or an enumeration supervisor be removed by the secretary of state, and the services performed by such supervisor were not satisfactory to the secretary of state, and the compensation therefor has not been fully paid, the secretary of state may reduce the compensation to be paid for such services. (*Amended by L. 1915, ch. 155.*)

§ 144. **Powers and duties of enumeration supervisors.**—Each enumeration supervisor shall, subject to the regulations prescribed by the secretary of state and under his control and direction:

1. Supervise the taking of the enumeration by the enumerators appointed as herein provided and see to it that the provisions of this article and the regulations of the secretary of state are fully complied with and carried into effect.

2. Aid and advise enumerators in the performance of their duties, instruct them relative thereto and give them such information as they may require.

3. Report to the secretary of state as to the incompetency, misconduct

and inaccuracies of enumerators, and make such recommendations in respect to such enumerators as he may deem advisable.

4. Distribute among the enumerators is his district blanks, schedules and returns, together with such other cards, instructions and other material as may be forwarded to him by the secretary of state for such purpose.

5. Receive and safely keep the returns of the enumerators and transmit them to the secretary of state at such times and in such manner as may be required by him, and tabulate and arrange such returns if required to do so by the secretary of state.

6. Have power to take affidavits of, and administer oaths to, enumerators and all other persons, pertaining to any matter coming within his jurisdiction or in any way relating to the enumeration herein authorized.

7. Perform such other duties relative to such enumeration as may be prescribed by the regulations of the secretary of state, or as may be required of him by the said secretary of state.

8. Examine the enumerators appointed for the several enumeration districts in his supervisory district for the purpose of ascertaining their qualifications to perform the duties required of them, and investigate as to the character of such enumerators and require each of them before beginning his work to present to him at least two certificates of good moral character, signed by reputable residents of the supervisory district in which such enumerator is to serve; he shall report the result of such examination and investigation to the secretary of state. (*Amended by L. 1915, ch. 155.*)

§ 145. **Enumeration districts.**—The secretary of state, in the month of April, nineteen hundred and fifteen, and during such month in every tenth year thereafter, shall cause each assembly district to be divided into enumeration districts consisting of one or more election districts as such districts were constituted on the day of the general election in the preceding year. But whenever in any city there is a county having more than one senate district, or which in the opinion of the secretary of state may under a new apportionment be entitled to more than one senate district, the enumeration district in such city shall consist of blocks, inclosed by streets or public ways.

The county clerk, board of elections, commissioner of elections or other officer whose duty it is under the election law to provide maps or furnish certificates showing the boundaries of election districts or perform other duties relative to such districts, shall, upon the request of the secretary of state, furnish and transmit such maps and certificates. (*Amended by L. 1915, ch. 155.*)

§ 146. **Appointment and qualifications of enumerators.**—The secretary of state shall, in the month of April, nineteen hundred and fifteen, and

during such month in every tenth year thereafter, appoint and may at pleasure remove an enumerator for each enumeration district created as provided in this article. Such appointment may be made by the secretary of state in his discretion, without examination, from lists of persons found by him to be qualified. Each person appointed as an enumerator shall be a citizen of the United States and of the state of New York and shall have been a resident of the district for which he is appointed for at least one year at the time of such appointment. If no person qualified to serve as an enumerator and willing to undertake the duties thereof resides in such district the secretary of state may appoint a person, who has shown the qualifications and fitness to hold such position as above provided, to act as an enumerator without regard to his residence.

The secretary of state shall issue to each enumerator a certificate of appointment under his hand in which certificate the district assigned to such enumerator shall be designated. He shall transmit with such certificate a description of the boundaries of the district within which the duties of the enumerator are to be performed. Such certificate shall be delivered to the person appointed and shall be evidence of the facts therein contained and of his authority to act under the provisions of this act. Such certificates together with the description of the boundaries of enumeration districts may be delivered to the enumeration supervisor who shall deliver the same to the enumerators of the districts within the assembly district for which such supervisor is appointed. (*Amended by L. 1915, ch. 155.*)

§ 147. **Compensation of enumerators.**—The compensation of enumerators shall be two dollars per day for each day actually and necessarily employed in making the enumeration and preparing duplicate copy of the returns, and one cent for each person enumerated in the return, provided, however, that in towns in counties included within the forest preserve, having less than one thousand inhabitants as shown by the last preceding census of the United States, the secretary of state may allow two cents for each person enumerated in the return. Such compensation shall be paid upon a verified account therefor rendered to the secretary of state, and approved by him and filed with the state comptroller, who shall draw his warrant upon the state treasurer therefor to be paid by the state treasurer from the funds as may be applicable thereto. The secretary of state may reduce or reject claims for compensation which in his judgment are excessive, unearned, illegal or unauthorized. (*Amended by L. 1915, ch. 155.*)

§ 148. **Interpreters.**—The secretary of state may authorize and direct enumeration supervisors to employ interpreters to assist enumerators in their respective enumeration districts in the enumeration of persons not speaking the English language. The qualifications of persons to act as such interpreters shall be ascertained by persons designated by the secretary of state. The compensation of such persons shall be fixed by the secretary of state. The compensation of such interpreters shall be fixed by

the secretary of state in advance, and shall not exceed three dollars per day for each day actually and necessarily employed. (*Amended by L. 1915, ch. 155.*)

§ 149. Oath of enumerators and interpreters.—Every enumerator or interpreter before entering upon his duties under the provisions of this article shall take and subscribe to the following oath or affirmation before any officer authorized to administer oaths, who shall certify such attestation without charging any fee therefor: being duly sworn, says that he is more than twenty-one years of age; that he is a citizen of the United States and of the state of New York; that he is now and has been a resident of enumeration district (as the case may be; or, if appointed outside of the block or district, give residence) of the in the county of state of New York for one year last past; that he has been duly appointed as the of said district for the purpose of taking an enumeration of the inhabitants of said district under the provisions of the law providing for the taking of a state enumeration of the state of New York during the year; and that he will perform the duties of to the best of his ability; that the list of inhabitants so taken and enumerated by him together with their residence by street or avenue and the number thereof shall in all respects be a true and correct list of all the inhabitants of said election district or block; that he will in all cases, to the best of his ability correctly state in such list, which of the inhabitants, if any, set forth therein are aliens; that he will not intentionally increase, suppress or diminish the number of inhabitants of such election district numerically or otherwise for any purpose whatever in taking, making and completing such enumeration. (*Amended by L. 1915, ch. 155.*)

§ 150. Failure of enumeration supervisors and enumerators to perform duties.—In the case of the inability or neglect of any chief enumeration supervisor, enumeration supervisor or enumerator appointed under or by virtue of this article to perform his duties as required, the secretary of state shall have full power, and it shall be his duty forthwith, to remove such enumeration supervisor or enumerator and in the manner aforesaid, to appoint an enumeration supervisor or enumerator to perform such service, and the secretary of state shall have full authority to confirm the accuracy of the enumeration of any district by such comparisons and investigations as a true enumeration demands. (*Amended by L. 1915, ch. 155.*)

§ 151. Removal of supervisors and enumerators and filling vacancies; amendment of enumerations.—The secretary of state may remove any chief enumeration supervisor, enumeration supervisor or enumerator and fill the vacancy thus caused or otherwise occurring whenever it shall appear that any portion of the enumeration provided for in this article has been

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negligently or improperly taken, and is by reason thereof incomplete or erroneous, and such enumerator shall forfeit all claim to compensation. Such vacancy shall be filled by the secretary of state in the same manner as an original appointment is made. The secretary of state may also cause such incomplete, erroneous, inaccurate and unsatisfactory enumeration to be amended or made anew under such methods as may, in his discretion, be practicable. (*Amended by L. 1915, ch. 155.*)

§ 152. **Enumeration of Indians.**—It shall be the duty of the secretary of state to appoint suitable persons to take the enumeration of the Indians residing on the several reservations in this state, who shall, in respect to such reservations, perform all the duties required of an enumerator by this article, and as the secretary of state in his instructions shall prescribe, for which service they shall be paid as other enumerators are compensated. (*Amended by L. 1915, ch. 155.*)

§ 153. **Commencement of enumeration; how enumeration made.**—On such day in the month of May or June, as the secretary of state shall direct, each enumeration supervisor shall cause the enumerator within his district to enumerate truly and accurately the inhabitants residing in the enumeration district for which he shall have been appointed, and to ascertain the facts and statistics required by the population schedule or return. It shall be the duty of each enumerator to visit personally each dwelling-house in his district and each family therein and each individual living out of a family in any place of abode, and by inquiry made of the head of each family or of a member or members thereof deemed credible and worthy of trust, or of such individual living out of a family, to obtain each and every item of information and all particulars required by this article and the regulations of the secretary of state as of such date in May or June as so directed by the secretary of state. And in case no person shall be found at the usual place of abode of such family or individual living out of a family competent to answer the inquiries made in compliance with the requirements of this article, it shall be lawful for the enumerator to obtain the required information from the family or families or person or persons living nearest to such place of abode. Every person whose usual place of abode shall be in any family on such date so prescribed by the secretary of state, shall be returned as of such family; and every inhabitant casually absent at the time of taking the enumeration shall be returned as belonging to that place in which he usually resides. Before the members of a family or inhabitants who are absent at the time of taking the enumeration are entered or returned as residents of the enumeration district, blank statements shall be forwarded to the head of such family or such inhabitant, at the place where such family or inhabitant is sojourning which shall be immediately returned to the enumerator properly filled out and signed by the head of such family or by such inhabitant. Such statements shall give the names of the members of such families or

inhabitants, the place where they are sojourning, when they are expected to return, and shall state whether or not they are residents of the enumeration district wherein their place of abode is situated and whether or not they are citizens of the state. If such statement is not returned to the enumerator as above provided within a reasonable time, the names of the members of such family or inhabitants who are absent, shall not be returned by the enumerator as residents of his district, unless an affidavit of some person known to the enumerator to be possessed of sufficient knowledge as to the said absent family or inhabitants be presented to such enumerator containing satisfactory information showing that the members of such absent family or such absent inhabitants are residents of such district and citizens of the state. If the place of abode of such absent family or inhabitant is in a building, containing two or more apartments occupied by separate families, the enumerator shall inquire of the owner, agent or manager of such building as to the residence, citizenship or alienage of such absent family or inhabitant. Such statements and affidavits shall be transmitted by the enumerator at the time of making his return to the enumeration supervisor. The return of the enumerator shall state the place where such absent inhabitant is sojourning, when he is expected to return and the occasion for his absence.

It shall be the duty of each enumerator to complete the enumeration and all his official work and forward before July first, or on such earlier date as the secretary of state may direct, in duplicate by express or as otherwise directed carefully inclosed, so as to protect the returns transmitted, the original schedules or returns, duly certified to the enumeration supervisor of the assembly district in which his district is located stating the number of pages of which said returns consist. In making such enumeration he shall for the purpose of identification ascertain and include the sex, age, color, nativity, citizenship or alienage, and the occupation of each inhabitant, with his residence by street and number, if any, or if there is no street and number, then such description as shall identify the place of residence. Such enumerator shall specially ascertain and note as to the citizenship of all foreign born inhabitants, and if they are naturalized shall require them to exhibit their naturalization papers. The names of children of naturalized citizens and of aliens shall be specially noted and the schedules, blanks and cards shall be so prepared as to permit facts as to citizenship and alienage to be carefully and clearly noted. In any city, in a county having more than one senate district, or which in the opinion of the secretary of state may under a new apportionment be entitled to more than one senate district, the enumeration shall be taken by blocks inclosed by streets or public ways, as well as by street and number. The enumeration supervisor shall at all times advise and instruct such enumerators as to such enumeration and shall examine all returns, schedules and cards transmitted to him by the enumerators under his supervision, and in the event of discrepancies or omissions being discovered in

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said returns, schedules and cards he shall use all diligence in causing the same to be corrected. In case the district assigned to any enumerator shall embrace all or any part of any incorporated borough, city or village, and also other territory not included within the limits of such incorporated borough, city or village, or either, it shall be the duty of the enumerator of such district to clearly and plainly distinguish and separate upon the population schedules or returns, the inhabitants of all or any part of such borough, city or village, as may be embraced in the district assigned to such enumerator from the inhabitants of the territory not included therein. (*Amended by L. 1915, ch. 155.*)

§ 154. Penalty for withholding information or giving false information.—Any person being the head of a family or member thereof of the age of twenty-one years, who shall refuse to give to the duly appointed enumerator or interpreter of the district wherein the person resides the information required by him relative to any of the particulars which such enumerator or interpreter is required to secure under the provisions of this article concerning such family or person, or who shall wilfully give false information to such enumerator concerning the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and not less than fifty dollars. (*Amended by L. 1915, ch. 155.*)

§ 155. Penalty for enumeration supervisor, enumerator or interpreter making false enumeration.—Any enumerator or interpreter who shall wilfully omit, suppress, increase or diminish the number of inhabitants embraced within his district from or on his enumerated list, schedule or return, or any enumeration supervisor who shall wilfully alter such list, schedule or return to suppress, increase or diminish the number of inhabitants as shown on such list, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit all compensation as an enumeration supervisor, enumerator or interpreter, and shall be sentenced to confinement in a penitentiary or jail for not more than three months. (*Amended by L. 1915, ch. 155.*)

§ 156. Completion of enumeration; penalty for failure to make return.—If any enumerator shall neglect for three days after the thirtieth of June, nineteen hundred and fifteen, and in every tenth year thereafter, or for three days after having been directed so to do, to make his return as aforesaid, the enumeration supervisor shall immediately proceed himself to procure such return and duplicate, and the expenses thereof shall be deducted from the account of such enumerator upon the voucher presented by the secretary of state to the state comptroller for the payment of services. The secretary of state is authorized to require that the enumeration of the inhabitants of any district shall be completed within two

L. 1911, ch. 890.

Laws repealed.

§§ 157, 158, 170, 171.

weeks from the date fixed by him for commencing the enumeration in each of said years. (*Amended by L. 1915, ch. 155.*)

§ 157. **Sheriffs and other officers to assist enumerators.**—In all counties of this state the sheriff, mayor or police commissioner of the city, or other officers having the control and direction of the police or other peace officers, shall render, and cause the police or other peace officers to render assistance and aid to the enumeration supervisor and enumerators appointed under this article when so requested to do by the secretary of state or enumeration supervisor and upon like request shall cause police officers or other peace officers to accompany such enumerators to any house or houses, place or premises for the purpose of rendering such aid and assistance. (*Amended by L. 1915, ch. 155.*)

§ 158. **Certificate of secretary of state conclusive evidence.**—A certificate under the hand and seal of the secretary of state as to the number of inhabitants of this state, or of any county, town, city or village, borough or district thereof, as shown by the completed and approved enumeration taken under the provisions of this article, shall be received as conclusive evidence of the fact by each and every court of this state. (*Amended by L. 1915, ch. 155.*)

ARTICLE X.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 170. Laws repealed.

171. When to take effect.

§ 170. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 171. **When to take effect.**—This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.....	Part 1, chapter 1	All
Revised Statutes.....	Part 1, chapter 2, title 2	All
Revised Statutes.....	Part 1, chapter 2, title 3	All
Revised Statutes.....	Part 1, chapter 3	All

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1778	12	2, 5,	1786	8	All
part relating to arms and great seal			1786	49	All
1779	24	All	1786	53	All
(3d Sess.)			1787	46	All
1780	32	All	1787	79	All
1780	38	All	1787	103	1
1782	18	All	1789	2	All
1783	28	All	(13th Sess.)		
1784	2	All	1790	7	All
(8th Sess.)			1790	18	All
1784	4	All	1791	4	4-6
(8th Sess.)			1792	4	All
1785	28	All	(16th Sess.)		
1785	29	All	1795	11	All

Laws repealed.			L. 1911, ch. 890.		
LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1795	33	All	1822	4	All
1796	19	All	1822	207	All
1796	47	All	1822	250	16
1797	33	9	1823	179	All
1798	6	All	1824	268	All
1798	93	5	1824	304	All
1798	112	All	1824	334	1
1800	6	All	1825	100	All
1800	15	All	1825	224	1
1800	76	All	1826	64	All
1801	27	5	1826	84	1
1801	125	All	1826	248	1
1801	159	All	1826	278	All
1801	175	All	1826	289	1-3
1802	47	2	1827	23	All
1802	72	All	1827	229	All
1803	23	All	1827	299	All
1803	54	All	1827	324	All
1803	106	13	1827	2	All
1804	19	All	(2d Meet.)		
1804	31	6	*1828	20	15,
1806	6	All	¶¶ 1-3		
1806	70	5	1828	21	1,
1807	51	All	¶¶ 74, 366, 422, 431, 483 (2d Meet.)		
1807	90	All	1828	211	All
1807	108	All	1830	332	All
1807	113	All	1831	289	All
1808	51	All	1832	334	All
1808	90	All	1833	6	All
1808	93	All	1833	96	All
1808	135	All	1833	181	All
1808	170	1	1833	259	All
1809	141	2	1834	8	All
1809	186	4	1835	40	All
1810	151	All	1835	42	All
1811	93	All	1835	147	All
1811	138	All	1836	19	All
1812	90	All	1836	77	24
1812	120	All	1836	436	1-3
1812	139	17	1837	121	All
R. L. 1813	14	6	1839	29	All
R. L. 1813	39	All	1839	232	All
R. L. 1813	68	All	1840	155	All
R. L. 1813	74	8	1842	57	All
1814	13	All	1842	316	All
1814	15	3	1842	325	1, 2
1814	28	All	1844	21	All
1814	189	All	1845	140	All
1815	121	All	1845	252	All
1815	142	All	1846	25	All
1815	160	All	1846	44	All
1815	208	All	1846	94	All
1816	16	All	1846	328	1
(40th Sess.)			1847	153	All
1818	126	All	1847	196	All
1818	288	1, 2, 8	1849	288	All
1821	8	All	1849	390	All
(44th Sess.)			1850	222	All
1821	57	6	1851	499	All
1821	84	All	1852	32	All
1821	90	All	1853	355	All
1821	110	All	1853	480	All
1821	164	All	1853	586	All

* ¶¶ 1 and 2 stricken from schedule and expressly re-enacted by L. 1909, ch. 240, § 87, in effect Apr. 22, 1909, as though never included in said schedule.

L. 1911, ch. 890.

Laws repealed.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1854	1	All	1874	330	All
1854	5	All	1874	432	All
1854	17	All	1875	40	2
1854	181	All	1875	114	All
1854	239	All	1875	143	All
1854	292	All	1875	359	All
1855	5	All	1875	424	All
1855	7	All	1875	502	All
1855	19	All	1876	147	1
1855	64	All	1876	345	All
1855	115	All	1876	410	All
1855	181	All	1878	216	All
1855	201	All	1878	370	All
1855	218	All	1879	33	All
1855	399	All	1879	93	All
1857	19	All	1879	166	All
1857	39	All	1879	206	All
1857	337	All	1879	208	All
1857	339	All	1879	345	1
1857	604	All	1879	425	All
1857	762	All	1880	15	All
1858	320	All	1880	29	All
1859	337	All	1880	65	8
1860	159	All	1880	69	All
1860	506	All	1880	196	All
1861	118	All	1880	213	All
1861	223	All	1880	340	All
1861	313	All	1880	491	All
1862	12	All	1880	559	All
1862	253	All	1881	61	2,
1862	454	All	part relating to assessment bonds; 3		
1864	9	All	1881	239	All
1865	13	All	1882	109	All
1865	34	All	1882	190	1-6, 8
1865	523	All	1882	229	All
1865	689	All	1882	245	All
1866	154	All	1882	343	All
1866	181	All	1882	377	3
1866	607	All	1883	108	All
1866	805	All	1883	128	All
1866	862	All	1883	214	4
1867	186	All	1883	223	All
1867	194	All	1883	280	All
1867	458	All	1883	385	All
1867	463	All	1883	424	All
1867	675	All	1883	499	All
1867	720	All	1884	11	All
1868	257	All	1884	75	All
1868	538	All	1884	273	All
1869	318	All	1884	351	All
1869	649	All	1884	533	All
1870	70	All	1885	96	All
1870	357	All	1885	115	All
1871	326	All	1886	46	All
1871	580	All	1886	47	All
1872	111	All	1886	93	All
1872	369	All	1886	414	All
1872	533	All	1886	449	All
1872	619	All	1886	560	All
1872	884	All	1886	610	All
1873	6	All	1887	69	All
1873	195	All	1887	91	All
1873	320	All	1887	92	All
1873	584	All	1887	421	All
1873	798	All	1888	159	All
1874	49	All	1888	296	All

Consolidators' notes.

L. 1911, ch. 890.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1888	300	All	1896	229	All
1888	357	All	1896	391	All
1889	129	All	1899	463	All
1889	212	All	1900	308	All
1889	268	All	1900	699	All
1889	336	All	1901	46	All
1889	445	All	1901	229	All
1890	18	All	1901	541	All
1891	103	All	1901	591	All
1891	183	All	1902	298	All
1892	5	All	1902	363	All
1892	157	All	1902	386	All
1892	215	All	1903	18	All
1892	295	All	1903	35	All
1892	397	All	1903	54	All
1892	398	All	1903	107	All
1892	505	All	1903	639	All
1892	678	All	1904	373	All
1893	8	All	1904	619	All
1893	22	All	1905	15	All
1893	98	All	1905	82	All
1893	218	All	1905	83	All
1893	261	All	1905	144	All
1893	628	All	1905	380	All
1894	228	All	1906	431	All
1895	193	All	1907	339	All
1895	1028	All	1907	727	All
1896	15	All	1908	164	All
1896	18	All			

CONSOLIDATORS' NOTE TO STATE LAW, IN RELATION TO COUNTY BOUNDARIES.

Counties and county boundaries.—There is presented herewith as a note to the State Law a collection of the statutes relating to the boundaries of the counties of the state. These statutes have not been consolidated as a part of the text because of the impossibility of any satisfactory consolidation. The complete boundaries of the counties of the state were last compiled and presented as a part of the Revised Statutes of 1829. This presentation of the boundaries of the counties of the state was made possible by the fact that the revisors were authorized to procure a survey of each county if necessary to present a description of its boundary. Since the enactment of the Revised Statutes counties have been divided, boundary lines have been changed, names of towns and objects of boundaries have been altered, and towns have been transferred without definite description of boundaries from one county to another. The statutes making changes in boundaries of counties are presented herewith without attempt at consolidation. So many changes have been made that it would not be wise for the Board to attempt a re-description of boundary lines without official action by either state or local officers. The state engineer and surveyor has authority to require the supervisors of counties to present to him boundaries of their respective counties, and before any consolidation of the statutes upon this subject is attempted the boundaries of each county should be secured from the local authorities and verified by the state engineer and surveyor. For this reason the Board has not consolidated the boundaries of counties in the text, but presents the statutes as they are found in the Session Laws for such action thereon as the legislature may deem best.

The statutes by which the state of New York, as a whole, has been divided into counties are:

L. 1788, ch. 63, 11th sess., which names and describes the following sixteen counties: Albany, Clinton, Columbia, Cumberland, Dutchess, Gloucester, Kings, Montgomery, New York, Orange, Queens, Richmond, Suffolk, Ulster, Washington, Westchester. Of these, Cumberland and Gloucester were ceded to Vermont, October 7, 1790, in the settlement of the New Hampshire Grants controversy.

Revised Acts, 1801, ch. 123, v. 2, p. 1, in addition to the counties above named, describes: Cayuga, Chenango, Delaware, Essex, Greene, Herkimer, Oneida, Onondaga, Ontario, Otsego, Rensselaer, Rockland, Saratoga, Schoharie, Steuben, Tioga; making the number of counties, thirty.

L. 1911, ch. 890.

Consolidators' notes.

Revised Laws, 1813, ch. 39, v. 2, p. 31, in addition to the thirty counties named, describes the following: Allegany, Broome, Cattaraugus, Chautauqua, Cortland, Franklin, Genesee, Jefferson, Lewis, Madison, Niagara, Putnam, St. Lawrence, Schenectady, Seneca, Sullivan, Warren. This increased the number of counties to forty-seven.

Revised Statutes, pt. 1, ch. 2, tit. 1, in addition to the forty-seven counties before described, named and described the following: Erie, Hamilton, Livingston, Monroe, Orleans, Oswego, Tompkins, Wayne, Yates, and increased the number of counties to fifty-six.

Since the enactment of Revised Statutes the following counties have been erected: Chemung, Fulton, Nassau, Schuyler, Wyoming; making the number of counties, sixty-one.

Names of the different counties.—The state shall be divided into sixty-one counties, called:

Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming and Yates.

[R. S., pt. 1, ch. 2, tit. 1, § 1; L. 1836, ch. 77, as to Chemung county; L. 1838, ch. 332, as to Fulton county; L. 1841, ch. 196, as to Wyoming county; L. 1854, ch. 386, § 6, as to Schuyler county; L. 1898, ch. 588, as to Nassau county.]

NOTE.—In R. S., pt. 1, ch. 2, tit. 1, § 1, the names of the counties are arranged according to the senate districts in which they were then situated. For convenience in reference the names of the counties have been rearranged in alphabetical order.

Boundaries of counties.—The extent and limits of the several counties shall be as follows:

1. **Albany.**—The county of Albany shall contain all that part of this state, bounded northerly, by the counties of Saratoga and Schenectady; westerly, by the west bounds of the manor of Rensselaerwyck; southerly, by the county of Greene; and easterly, by the county of Rensselaer.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 16.]

NOTE.—The towns, the westerly lines of which form the westerly boundary of Albany county, are given, by R. S., pt. 1, ch. 2, tit. 4, § 15, as being: Knox, Berne, and Rensselaerville; Knox being the northerly town and Rensselaerville the southerly.

2. **Allegany.**—The county of Allegany shall contain all that part of this state, bounded easterly, by the county of Steuben; northerly, by the counties of Livingston and Genesee; westerly, by a meridian line between the second and third ranges of townships of the Holland Company's purchase; and southerly, by the south bounds of the state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 54.]

NOTE.—The northern boundary is given as "by the counties of Livingston and Genesee." By L. 1841, ch. 196, Wyoming county was set off from Genesee county, and thereby Wyoming county becomes a part of the northern boundary of Allegany county in the place of Genesee county.

The following statutes relate to and effect Allegany county.

§ 1. The towns of Eagle, Pike, and all that part of the town of Portage, in the county of Allegany, lying on the west side of the Genesee river, bounded as follows: On the east by the Genesee river; on the south by a line running due easterly from the south line of the town of Pike, until it intersects the Genesee river; and west and north by the original lines of said town, from and after the passage of this act, shall be and the same are hereby annexed to the county of Wyoming.

§ 2. The territory hereby taken from the said town of Portage, and three-quarters of a mile of territory, being one tier of lots as surveyed by the Holland Land Company, from the east side of the said town of Pike, shall, from and after the passage of this act, be a separate town, by the name of the town of Genesee Falls; * * *

§ 4. All the residue of the town of Portage lying west of the Genesee river, shall, from and after the passage of this act, be annexed to the town of Hume in the county of Allegany.

[L. 1846, ch. 51, §§ 1, 2, pt. 4.]

§ 1. The towns of Nunda and Portage in the county of Allegany are hereby annexed to the county of Livingston.

[L. 1846, ch. 197, § 1.]

§ 1. The town of Ossian, in the county of Allegany, is hereby annexed to the county of Livingston.

[L. 1857, ch. 166, § 1.]

3. Broome.—The county of Broome shall contain all that part of this state, bounded on the west, by a line beginning in the south bounds of this state, where a continuation of the easterly bounds of Cox's patent strikes the same, and running thence north along the same to the southeast corner of said patent; then along the east bounds thereof to the south bounds of the Boston purchase; then along the same west, to the southeast corner of lot number one hundred and seventeen in the township of Nanticoke; then along the east bounds thereof north to the northeast corner of said lot number one hundred and seventeen; then along the north bounds thereof west to the southwest corner of lot number one hundred and twenty-one; then north along the line of lots to the northwest corner of lot number one hundred and seventy-one; then east along the line of lots to the southwest corner of lot number twelve, of the grand division of the said Boston purchase; then following a line constituted by the west bounds of the following lots and lines, at right angles to the same, connecting them, namely: number twelve, twenty-nine, fifty-two, sixty-nine, ninety-two, one hundred and nine, one hundred and thirty-two, one hundred and forty-nine, one hundred and seventy-two, one hundred and eighty-nine, two hundred and twelve, two hundred and thirty, two hundred and fifty-one, two hundred and seventy, two hundred and ninety-one, three hundred and ten, three hundred and thirty, three hundred and fifty-one, three hundred and seventy, three hundred and ninety-one, four hundred and ten, four hundred and thirty-two, four hundred and forty-nine, four hundred and seventy-two, four hundred and eighty-nine, five hundred and thirteen, five hundred and twenty-eight, five hundred and fifty-three, and five hundred and sixty-eight; northerly and easterly by a line beginning at the northwest corner of lot number five hundred and sixty-eight, and running thence east along the south bounds of the north tier of short or square lots, so called, of said Boston purchase, to the Tioughnioga branch of the Susquehanna river; then along the same to the south bounds of the township of Cincinnati; then along the same east, to the county of Chenango; then southerly and easterly along the county of Chenango, to the county of Delaware; and then southerly along the county of Delaware, to the south bounds of the state; and on the south, by the south bounds of the state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 37.]

NOTE.—The following statute relates to and affects Broome county:

§ 1. All that part of the town of Greene, in the county of Chenango, lying south of a line beginning at a point on the Chenango river, in range with the south line of John Willard's land, and running thence westerly along said line, or in the same direction to the north and south line between the counties of Chenango and Broome, shall be attached to and form a part of the town of Barker in the county of Broome.

[L. 1840, ch. 180.]

4. Cattaraugus.—The county of Cattaraugus shall contain all that part of this state, bounded easterly, by the county of Allegany; northerly, by the counties of Genesee and Erie; westerly, by a meridian line between the ninth and tenth ranges of townships of the Holland Company's purchase; and southerly, by the south bounds of the state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 55.]

NOTE.—By the erection of Wyoming county (L. 1841, ch. 196) from the south part of Genesee county, Wyoming county became a part of the northern boundary of Cattaraugus county, in the place of Genesee county.

5. Cayuga.—The county of Cayuga shall contain all that part of this state, bounded as follows: Beginning at the northeast corner of the county of Tompkins, and running thence westerly along the north bounds of said county, to the middle of the Cayuga lake; then down the middle of said lake, to the outlet thereof; then down the said outlet, to the west line of the township of Brutus; then north along the west lines of the townships of Brutus and Cato, and the same line continued to the north bounds of this state; then northeasterly along the same, to the county of Oswego; and then southerly along the westerly bounds of the counties of Oswego, Onondaga and Cortland, to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 43.]

NOTE.—A comparison of the lines given as boundaries of the county with the

L. 1911, ch. 890.

Consolidators' notes.

lines bounding the towns [R. S., pt. 1, ch. 2, tit. 4, § 42] shows a discrepancy, the county boundary apparently omitting the towns of Stirling, Victory and Conquest from the county.

6. Chautauqua.—The county of Chautauqua shall contain all that part of this state, bounded easterly, by the county of Cattaraugus; northerly, southerly and westerly, by the county of Erie and the bounds of this state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 56.]

NOTE.—A better reading would be: Bounded easterly by Cattaraugus county; northerly by Erie county and the bounds of the state; and westerly and southerly by the bounds of the state. See Erie county and its boundaries.

7. Chemung.—All that part of the county of Tioga lying and being on the west side of a line beginning on the east bank of the Chemung river on the line between the states of New York and Pennsylvania; thence up the said river along the banks thereof at low water mark to a sulphur spring, near the center of the lower narrows on said river; thence in a direct line northeasterly, until it strikes the southeast corner of a lot number one hundred and fifty-three; thence north along the east line or boundary of lots number one hundred and fifty-three, two hundred and one, two hundred and two and two hundred and three, to the south line of the town of Erin; thence east along the said south line to the Cayuta creek; thence up the center of said creek to the south line of the town of Cayuta; thence east along said line to the east line of the said town of Cayuta; thence north along said line to the county of Tompkins, shall, from and after the passing of this act be a separate and distinct county of the state of New York, and be called Chemung; and the freeholders and inhabitants thereof shall possess and enjoy all the rights and immunities which the freeholders and inhabitants of the several counties of this state are by law entitled to possess and enjoy.

[L. 1836, ch. 77, § 1.]

Excepting from the territory above described so much of the said county of Chemung as was set apart and erected into the county of Schuyler by L. 1854, ch. 386, § 6.

[L. 1854, ch. 386, § 6.]

NOTE.—Cayuta creek is now known as Shepherd creek. The following statutes relate to and affect Chemung county:

§ 1. All that part of the town of Newfield, Tompkins county, lying on the west side of said town, beginning on the north line of the said town of Newfield, at the northeast corner of lot number four; thence along the east line of lots number four, eight, twelve, nineteen to eighty-four, and fifty-one, fifty-two, nine and ten, to the south bounds or line of said county of Tompkins, shall, on and after the first day of January, one thousand eight hundred and fifty-six, be annexed to and form a part of the town of Catharine, in said county of Chemung.

[L. 1853, ch. 327, § 1.]

§ 1. All that part of the town of Bradford, in the county of Steuben, lying east of the section line, and being the west line of lots numbers thirty-one, thirty-five, forty, one, two, three and four, shall, from and after the passage of this act, be annexed to and form a part of the town of Orange.

§ 2. All that part of the town of Wayne, in the county of Steuben, lying east of the section line, and being the east line of a tier of lots numbered one, respectively, and running across the town of Wayne, shall, from and after the passage of the act, be annexed to and form a part of the town of Tyrone.

[L. 1854, ch. 386, §§ 1, 2.]

§ 3. All those parts of the towns of Erin and Cayuta, in the county of Chemung, embracing the following territory: Beginning at the northeast corner of the town of Cayuta, running thence west along the town line between the towns of Newfield and Cayuta to the west line of lot number forty-three; thence south along the west line of lots numbers thirty, twenty-five, twelve and seven, passing through another lot designated as number forty-three, and thence along the southeast line of lot number twenty-nine to the southeast corner thereof; thence southeasterly along the line of lots numbers twenty-eight, twenty-seven, twenty-six, twenty-five and twenty-four, to lot number sixteen; thence along the north line of lot number sixteen to the northeast corner thereof; thence south along the east line of lots number sixteen and seventeen, and a straight continuation of the same to the town line of Chemung; thence east along the town line between the towns of Erin and Chemung to the Cayuta creek, being the southeast corner of the town of Erin; thence north along the town line of Barton to the northwest corner of said town; thence east along the town line be-

tween the towns of Barton and Cayuta to the southeast corner of the town of Cayuta; thence north along the east line of the town of Cayuta to the place of beginning, shall, from and after the passage of this act, be erected into a new town to be known and distinguished as the town of Van Etten, and shall remain with and belong to the county of Chemung.

[L. 1854, ch. 386, § 3.]

§ 4. All those parts of the towns of Erin and Catharine, in the county of Chemung, embracing the following territory: Beginning in the center of Cayuta creek, in the southeast line of lot number twenty-nine; thence along the south line of said lot number twenty-nine to the southeast corner thereof; thence along the northwest line of lots numbers twenty-nine, thirty and thirty-one, to the southeast corner of lot number one; thence west along the south line of lots numbers one, two and three, to the southwest corner of said lot number three; thence north along the west line of lot number three to the section line; thence west along the section line to the town line of Veteran; thence north along the town line of Veteran and the west line of lots numbers eighty, eighty-six, eighty-seven and eighty-eight, in Catharine, to the section line; thence east along the north line of lots numbers eighty-eight, one, fifty and fifty-one, to the town line of Newfield; thence south along the town line between Newfield and Catharine to the town line of Cayuta, which territory shall, from and after the passage of this act, be annexed to and form a part of the town of Cayuta.

[L. 1854, ch. 386, § 4.]

8. Chenango.—The county of Chenango shall contain all that part of this state, bounded as follows: Beginning at the southeast corner of township number eighteen of the twenty townships, and running thence westerly along the south bounds thereof, to the east bounds of township number nine; then northerly along the same, to the southeast corner of township number four; then along the south bounds of townships number four, five and six, and the same continued to the military tract; then southerly along the east bounds of the military tract, to the southeast corner thereof; then with a straight line to the confluence of the Tioughnoga and Chenango rivers, and to the east bank of the last mentioned river; then up said river along eastern bank thereof, to the northwest corner of a tract granted to John Jay and John Rutherford; then along the north bounds thereof, and the same line continued, until it meets the west line of the township called Clinton, in a map made by the surveyor-general of this state; then southerly along the same to the southwest corner thereof; then east along the south bounds thereof, to the county of Delaware; then northerly along the counties of Delaware and Otsego, to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 36.]

NOTE.—The following statute relates to and affects Chenango county:

§ 1. All that part of the town of Greene, in the county of Chenango, lying south of a line beginning at a point on the Chenango river, in range with the south line of John Willard's land, and running thence westerly along said line, or in the same direction to the north and south line between the counties of Chenango and Broome, shall be attached to and form a part of the town of Barker in the county of Broome.

[L. 1840, ch. 180.]

9. Clinton.—The county of Clinton shall contain all that part of this state, bounded southerly, by Essex county; easterly and northerly, by the bounds of the state; and westerly, by the east bounds of numbers seven, eight, nine and ten, of the old military townships.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 26.]

10. Columbia.—The county of Columbia shall contain all that part of this state, bounded southerly, by the county of Dutchess; westerly, by the county of Greene; northerly, by an east line from the southernmost part of Bearen island, in Hudson's river, to the eastern bounds of this state; and easterly, by the northeast part of the county of Dutchess, and the eastern bounds of this state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 15.]

NOTE.—The following statute relates to and affects Columbia county: The territory known as Boston Corner consists of a triangular tract containing about 500 acres. It was a part of the commonwealth of Massachusetts, bounded on two sides by New York, and separated from the rest of the state of Massachusetts by the Taghanic mountains. Under date of December, 1848, the inhabitants of the tract petitioned to be annexed to the state of New York. The petition was followed on May 14, 1853, by a cession of the tract to the state of New York, which took effect January 3, 1855, which was the date of the approval of the act of Congress giving assent to the cession. See State Law, § 3.

L. 1911, ch. 890.

Consolidators' notes.

§ 1. The district of "Boston Corner," lately ceded to the state of New York by the state of Massachusetts, is hereby annexed to the town of Ancram, in the county of Columbia.

[L. 1857, ch. 379, § 1.]

11. Cortland.—The county of Cortland shall contain all that part of this state, bounded as follows: East, by the east bounds of the military tract; north, by a line beginning at the southeast corner of lot number fifty, in the township of Fabius, and running thence west along the line of lots to the southeast corner of lot number fifty, in the township of Tully; and then west along the line of lots to the west bounds of the township of Tully; westerly, by the west bounds of the townships of Tully, Homer and Virgil; and southerly, by the counties of Tioga and Broome.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 38.]

NOTE.—The north boundary appears, by comparison with the description of the towns in Onondaga county, contained in R. S., pt. 1, ch. 2, tit. 4, § 41, to be faulty.

The town of Tully was divided, and the town of Spafford was set off from the westerly part of it.

12. Delaware.—The county of Delaware shall contain all that part of this state bounded as follows: Beginning on the bank of the Delaware river, at the northwest corner of the county of Sullivan, and running thence north sixty-two degrees east, to the southwesterly bounds of great lot number eight in the Hardenburgh patent; then north forty degrees east, to the southwesterly bounds of lot number five, in the subdivision of great lot number eight; then the same course continued twenty-four chains; then on a straight line to a point where the first mentioned line continued, crosses the northeasterly bounds of lot number six, in the subdivision of the great lot number eight; then along the first mentioned line continued to the northeast bounds of great lot number eight; then along the bounds of the said lot number eight, northwesterly to the southwest corner of lot number twenty in the said patent; then northeasterly along the division line between lots number nineteen and said lot number twenty, and that line continued, until it intersects the line formerly run from the head of Kaater's creek, to the Lake Utsayantho; then along the said line, and the southerly bounds of the county of Schoharie, to the Charlotte river; then down the middle thereof until the same is intersected by a line run south from the center of lot number thirteen in M'Kee's patent; then in a direct line to the northeast corner of lot number thirty-five of Fitch's patent; then westerly to the northwest corner of lot number nine; then north to the northeast corner of lot number seven; then west along the north bounds of number seven and four to the northwest corner of said lot number four; then southwesterly along a line which shall be at the same distance from the mouth of Charlotte river as the northeast corner of the land now or late of Daniel Hunt is distant from the mouth of Cherry Valley creek, to the middle of Charlotte river; then down along the same to the Susquehanna river; then down the middle of the Susquehanna river to Wallace's patent; then along the bounds thereof southerly and westerly to the land now or late of Daniel Swift; then along the same, south thirty-one degrees and five minutes east, thirty chains, and south fifty-eight degrees and fifty-five minutes west, forty-four chains and seventy-eight links, to land now or late of Benedict Northrup; then along the same, south thirty-one degrees and five minutes east, twelve chains; then south fifty-eight degrees and fifty-five minutes west, sixty-four chains, to the most southerly corner of land now or late of John Brimmer; then along the bounds thereof, north thirty-one degrees and five minutes west, to the bounds of said Wallace's patent; then along the same southwesterly to a line run south fourteen degrees west, from a large black oak tree marked T. C., and standing at the bank of the Susquehanna river, on lot number thirty-three in said patent; then along said line and the same continued northerly to the middle of said river; then down along the same to the line of property; then southerly, along the line of property, to the Delaware river; then down the waters thereof, and along the bounds of the state, to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 13.]

13. Dutchess.—The county of Dutchess shall contain all that part of this state, bounded easterly, by the east bounds of this state; southerly, by the county of Putnam; westerly, by the counties of Orange and Ulster; and northerly, by a line beginning at a point in the middle of the Hudson river, due east from the south bank of Sawyer's kill, on the west side of Hudson's river; then east to a line heretofore settled and established between Robert R. Livingston and Zachariah Hoffman, deceased, and others, as their mutual boundary, so far as it respected them individually, and running thence along the same as far as it runs, and the

same course continued to the southernmost bend of Roeloff Jansen's kill; then along the southerly and easterly bounds of the manor of Livingston, to the northwest corner of the Oblong, in the division line between this state and the state of Massachusetts; and then along the said line easterly, to the division line between this state and the state of Connecticut.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 8.]

NOTE.—The course and boundary given in the foregoing description, "to the northwest corner of the Oblong, in the division line between this state and the state of Massachusetts," appears to be incorrect, in that "the northwest corner of the Oblong" does not touch the Massachusetts line.

14. Erie.—The county of Erie shall contain all that part of this state, bounded easterly, by the county of Genesee; northerly, by the county of Niagara; westerly, by the bounds of the state; and southerly, by the Cattaraugus creek, and a line running northwest from its mouth to the bounds of the state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 53.]

NOTE.—L. 1890, ch. 364, required the survey of the boundary between Erie and Genesee counties before June 15, 1890.

A letter of the state engineer and surveyor, filed with the report mentioned below, states that it was impossible to determine within the time stated the boundary line referred to.

Under L. 1892, ch. 483, the state engineer and surveyor submitted a report dated December 28, 1892, which report is filed in the office of the secretary of state in "town boundaries fixed by boards of supervisors and determinations of state engineer and surveyor, 1880-1900."

§ 1. The state engineer and surveyor is hereby authorized and required on or before the fifteenth day of June, eighteen hundred and ninety, to make a survey and to determine, therefrom the boundary line between the county of Genesee and the counties of Erie and Niagara, as the same are located and fixed by statute; and to file said determination in the office of the secretary of state, which survey and determination shall be conclusive upon the subject until the legislature shall by law otherwise direct.

[L. 1890, ch. 364, § 1.]

§ 1. The state engineer and surveyor is hereby authorized and required on or before the first day of January, eighteen hundred and ninety-three, to examine the statutes bearing on the boundary line between the counties of Erie and Genesee, and take such legal testimony, documentary or otherwise as may be offered, and from such statutes and testimony, to locate and determine the correct boundary line between the counties of Erie and Genesee, and more particularly the correct division county line between said counties between the town of Newstead in the county of Erie, and the town of Alabama in the county of Genesee, and to file said determination in the office of the secretary of state, which survey and determination shall be conclusive upon the subject until the legislature shall by law otherwise direct.

[L. 1892, ch. 483, § 1.]

The erection of Wyoming county by L. 1841, ch. 196, made the eastern boundary of Erie the counties of Genesee and Wyoming.

15. Essex.—The county of Essex shall contain all that part of this state, bounded southerly, by the counties of Washington and Warren; easterly, by the east bounds of this state; westerly, by the west line of the counties of Saratoga and Warren, continued to Macomb's purchase; then along the south bounds thereof, to the southeast corner thereof; then along the east bounds thereof, to the northwest corner of township number eleven of the old military tract; then east along the north bounds thereof, and the north bounds of township number two, to the northeast corner thereof; then south along the line of the old military tract, to the middle of the channel of the north branch of the great river Ausable; then down the middle of the channel thereof, to the upper forks of said river; then down the middle of the channel of said river, to the south line of the great location; then easterly on said line to Lake Champlain; and then east to the east bounds of this state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 25.]

NOTE.—A comparison of the town boundaries and names of towns contained in R. S., pt. 1, ch. 2, tit. 4, § 24, with a late map of Essex county shows that some of the towns named in the last-named statute have been changed either in name or in boundaries.

See also L. 1902, ch. 473, in note to Franklin county.

16. Franklin.—The county of Franklin shall contain all that part of this state, bounded as follows: Beginning in the north bounds of this state, at the north-

L. 1911, ch. 890.

Consolidators' notes.

west corner of the county of Clinton, and running thence southerly along the west bounds of said county, to the north bounds of the county of Essex; then along the same west to the northwest corner thereof; then south along the same to the southeast corner of Macomb's purchase; then westerly along the south line of said purchase, to the division line between great lots number one and two; then northerly along the same to the tract called the St. Regis reservation; then westerly and northerly along the bounds thereof to the north bounds of the state; and then along the same easterly to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 27.]

NOTE.—A comparison of the town boundaries and names of towns contained in R. S., pt. 1, ch. 2, tit. 4, § 26, with a late map of Franklin county shows that some of the towns named in the last cited statute have been changed either in name or in boundaries.

The following statute refers to and affects Franklin county:

§ 1. The state engineer and surveyor is hereby authorized and directed to locate, establish and permanently mark upon the ground the south boundary line and a portion of the southwest boundary line of the county of Saint Lawrence and south boundary line of the county of Franklin, being the north boundary line of the counties of Lewis, Herkimer and Hamilton and a portion of the north boundary line of the county of Essex, state of New York. That the state engineer and surveyor make and file in his office a report of the field work done by him or under his direction in locating, establishing and permanently marking such boundary line together with a map which shall correctly show the location, establishment and permanent marking of such line upon the ground, and that he also file in his office all field notes, maps and data obtained and made by him in the location of such line; that said state engineer and surveyor upon the completion of his said report and of the said map cause true copies thereof to be filed in the office of the comptroller and in each of the county clerk's offices of the counties of Saint Lawrence, Franklin, Herkimer, Hamilton, Lewis and Essex in the state of New York; that upon filing such report and map in the state engineer and surveyor's office, the office of the comptroller and in the county clerks' offices of the counties of Saint Lawrence, Franklin, Herkimer, Hamilton, Lewis and Essex, the same shall be presumptive evidence that the south boundary line and a portion of the southwest boundary line of the county of Saint Lawrence and the south boundary line of the county of Franklin, being the north boundary line of the counties of Herkimer, Hamilton and Lewis and a portion of the north boundary line of the county of Essex have been and are regularly, properly, duly and legally located, established and permanently marked upon the ground as shown by such report and map filed as herein provided, and it shall be conclusive evidence thereof from and after the expiration of one year from the date of such filing.

[L. 1902, ch. 473, § 1.]

Trespass by state officers.—Agents of the state who without the consent of the owner enter upon lands for the purpose of making a survey as authorized by this section, fell trees thereon and otherwise injure the property, such acts constitute a trespass for which the agents are individually liable. This act does not confer upon the state engineer the power of eminent domain in order to effect the purpose of the act. *Litchfield v. Bond* (1906), 186 N. Y. 66, revg. (1905), 105 App. Div. 229, 93 N. Y. Supp. 1016.

17. Fulton.—All that part of the county of Montgomery lying and being on the north side of a line beginning at the northwest corner of the first tier of lots in Klock and Nellis's patent, in the town of Oppenheim, on the west line of the county of Montgomery, and running thence through the towns of Oppenheim and Ephratah, on a straight line to the center of the New turnpike (so called), where said turnpike crosses the highway leading from the village of Ephratah to Palatine bridge; thence easterly on a straight line to the southeast corner of the town of Broadalbin, in the said county of Montgomery, shall, from and after the passing of this act, be a separate and distinct county of the state of New York, and be known and called by the name of Fulton and entitled to and possessed of all the benefits, rights, privileges and immunities, and subject to the same duties as the other counties of this state; and the freeholders and inhabitants thereof shall possess and enjoy all the rights and immunities which the freeholders and inhabitants of the several counties of this state are by law entitled to possess and enjoy. All the remaining part of the present county of Montgomery shall be and remain a separate and distinct county by the name of Montgomery.

[L. 1838, ch. 332, § 1.]

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NOTE.—The following statute relates to and affects Fulton county:

§ 1. All that part of the town of Mayfield, in the said county of Fulton, lying within the following boundaries, to wit: Commencing where the east line of the town of Mayfield intersects the south line of Hamilton county, and running thence south on said town line in the county of Fulton to the center of great lot number two, in Glen, Bleecker and Lansing's patent; thence west until it intersects the east line of the town of Bleecker, in said county of Fulton; thence north on said town line until it intersects the south line of Benson township.

§ 2. All that part of the town of Hope, in the said county of Hamilton, lying within the following boundaries, to wit: Commencing at the northeast corner of the town of Bleecker, where it intersects the south line of Hamilton county, and running thence west, on said county line, until it intersects the east line of the town of Arietta; thence north on said town line until it intersects the south line of the town of Lake Pleasant; thence east on said town line until it intersects the east line of Benson township; thence southerly on said township line, until it intersects the northeast corner of lot number sixty, in said Benson township; thence down the center of the Sacandaga river, as it winds and turns, until it intersects the south line of the county of Hamilton; thence west on said county line until it intersects the east line of the town of Mayfield, when it connects with the south line of said Hamilton county, are hereby erected into a separate and new town, to be hereafter known and distinguished by the name of Benson.

§ 3. All the remaining part of the town of Hope shall be and remain a separate town, by the name of the town of Hope.

§ 4. All the remaining part of the town of Mayfield shall be and remain a separate town, by the name of the town of Mayfield.

§ 5. The town of Benson, hereby erected, shall hereafter be attached to and belong to the county of Hamilton.

[L. 1860, ch. 178, §§ 1-5.]

18. Genesee.—The county of Genesee shall contain all that part of this state, bounded easterly, by the counties of Monroe, Livingston and Allegany; northerly, by the south bounds of the counties of Orleans and Monroe; westerly, by a meridian line between the fourth and fifth ranges of townships of the Holland Company's purchase; and southerly, by the north bounds of township number six, in the third and fourth ranges, and the north bounds of township number seven, in the first and second ranges of said township, and the said northerly bounds continued easterly to the southwest corner of the county of Livingston.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 50.]

Excepting from the territory above described so much thereof as was erected into the county of Wyoming by L. 1841, ch. 196.

[L. 1841, ch. 196.]

NOTE.—See note to Erie county. Also L. 1890, ch. 364, § 1, as to boundary line between counties of Genesee, Erie and Niagara; and L. 1892, ch. 483, § 1, as to boundary line between counties of Erie and Genesee; in note to Erie county.

19. Greene.—The county of Greene shall contain all that part of this state, bounded southerly, by the county of Ulster and part of the county of Delaware; easterly, by the middle of Hudson's river; north and northwesterly, by a line drawn west from the southernmost part of Bearon island, in said river, to the southwest corner of the manor of Rensselaerwyck, and a line drawn thence to the place where the line formerly run from the head of Kaater's creek to a small lake called Utsayantho intersects the Schoharie creek; and westerly, by the said county of Delaware; including also in said county of Greene, Scutter's island, Little island, and Willow island, or so much thereof as belongs to any of the inhabitants of said county.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 14.]

NOTE.—The following statute relates to and affects Greene county:

§ 1. The territory lying in the town of Broome, in the county of Schoharie, and the town of Durham in the county of Greene, which is embraced within the following described boundaries, is hereby erected into and the same shall constitute a town by the name of Conesville, viz.: Beginning at the center of the Schoharie creek, in the county of Schoharie, where the manor creek empties into the same; thence north forty-six degrees east, one hundred and seventy-six chains, to the northwest corner of a lot in Scott's patent known as the "Leming lot"; thence east along the lines of lots in the said patent three hundred and twenty chains, to the east line of the said patent; thence south along the east line of the said patent twenty-one chains, to the north line of Stringer's patent; thence east along the north line of the said last mentioned patent, one hundred and seventy-six chains, to the east line of the county of Schoharie; thence south-

L. 1911, ch. 890.

Consolidators' notes.

erly along the said east line of the said county, to the north line of the county of Greene; thence eastwardly along the north line of the said county of Greene, thirty-four chains; thence south two degrees east, one hundred and sixty-six chains to the dividing line between the towns of Durham and Windham; thence westwardly and northwardly along the said dividing line and the dividing line between Durham and Prattsville, until it intersects the north line of the county of Greene; thence westwardly along the said county line, to the center of the said Schoharie creek, and thence northwardly down the center of the said creek to the place of beginning.

§ 2. The residue of the territory of the town of Broome, in the said county of Schoharie, which is not embraced within the boundaries described in the first section of this act, shall be and remain the town of Broome; and the residue of the territory of the town of Durham, in the county of Greene, which is not embraced within the said boundaries, shall be and remain the town of Durham.

§ 3. All that part of the county of Greene, which is included within the said boundaries, is attached to and shall be a part of the county of Schoharie.

[L. 1836, ch. 31, §§ 1, 2, 3.]

20. **Hamilton.**—The county of Hamilton shall contain all that part of this state, bounded on the south, by the north bounds of the tract called Jerseyfield and the south bounds of the township of Benson continued to the west bounds of the county of Saratoga; on the east, by a part of the west bounds of the county of Saratoga, the west bounds of the county of Warren, and part of the west bounds of the county of Essex; on the north by the south bounds of Macomb's purchase; and on the west, by a line beginning at a point in the south bounds of Macomb's purchase, due north from the northwest corner of the tract called Arthorborough, and running thence south to said corner; then along the division line between Arthorborough and Nobleborough to their southern boundary; then south thirteen degrees west, as the magnetic needle pointed in the year one thousand eight hundred and two, to the north bounds of the tract called Jerseyfield.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 22.]

NOTE.—See L. 1902, ch. 473, in note to Franklin county. Also L. 1860, ch. 178, §§ 1-5, in note to Fulton county. Also L. 1900, ch. 439, §§ 1, 2, in note to Herkimer county.

21. **Herkimer.**—The county of Herkimer shall contain all that part of this state, bounded northerly, by the county of St. Lawrence; easterly, by the counties of Hamilton and Montgomery; southerly, by the county of Otsego; westerly, by a line beginning at the southwest corner of a tract called Cochran's patent, and running thence northerly and easterly along the bounds thereof, to a line beginning in the south bounds of the tract granted to William Bayard and others, called the Freemason's patent, where the same is intersected by a line run south from the former fording place in the Mohawk river, at old Fort Schuyler, now called Utica; and running thence north along said line, to the southerly line of Cosby's manor; then northeasterly in a direct line to the northerly bounds of said manor, at a point where the same is intersected by the division line between Gage's and Walton's patent; then northerly on the line between the said patents, to the West Canada creek; then up the said creek to the northeast corner of Service's patent; and then north to the county of St. Lawrence.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 29.]

NOTE.—The boundary line between Herkimer and Hamilton counties mentioned in L. 1900, ch. 439, is on file in the office of the state engineer and surveyor.

See also L. 1902, ch. 473, in note to Franklin county.

The statute of 1852, ch. 169, relates to and affects the county of Herkimer. The boundary line referred to therein does not appear to be on file.

§ 1. The state engineer and surveyor is hereby authorized and directed to determine, locate, establish and permanently mark the boundary line between the counties of Herkimer and Hamilton; said boundary line shall begin at the northwest corner of the tract called Arthorborough, as said corner shall be determined and located by the state engineer and surveyor, and from thence shall run on a straight line, the direction of which shall be as described in chapter seventy-four of laws of seventeen hundred and ninety-seven, creating and describing the line of division between the then counties of Montgomery and Herkimer. The line thus described shall be run to intersect the southerly line of the county of Saint Lawrence.

§ 2. The boundary line thus run by the state engineer and surveyor under the provisions of this act shall be the boundary line between the counties of Herkimer and Hamilton and all acts inconsistent herewith are hereby repealed.

[L. 1900, ch. 439, §§ 1, 2.]

§ 1. The commissioners of the land office shall cause the boundary line between the counties of Herkimer and Lewis to be surveyed, permanently established, and plainly marked; said survey to be made as soon as in their judgment may be deemed practicable, the expense thereof to be paid by the treasurer, on the warrant of the comptroller, out of any moneys in the treasury, not otherwise appropriated.

[L. 1852, ch. 169, § 1.]

22. *Jefferson*.—The county of Jefferson shall contain all that part of this state, bounded as follows: Beginning at the southwest corner of the township of Minos, and running thence along the southerly bounds of the said township, to the southeast corner thereof; then northerly along the easterly bounds thereof, to the southwest corner of the township of Atticus; then easterly along the south bounds of the townships of Atticus and Fenelon, to the southeast corner of the said township of Fenelon; then northerly along the east bounds of the township of Fenelon, to the northeast corner thereof; then westerly along the north bounds thereof, to the southeast corner of the township of Orpheus; then northerly along the east bounds of said township, to the south bounds of the township of Milan; then southeasterly along the southerly bounds of the said township, to the southwest corner of the township of Howard; then northeasterly along the southeasterly bounds of the said township, to the most easterly corner thereof, on the Black river; then up the said river, to a point where the division line between the nineteenth and twentieth northern ranges of lots, of great lot number four, of Macomb's purchase, strikes the river; then easterly along the said line, to the southwest corner of the lot in the twentieth northern and eighth western ranges; then northerly along the line between the eighth and ninth western ranges, to the southwest corner of the lot in the twenty-third northern and eighth western ranges; then easterly along the division line between the twenty-second and twenty-third northern ranges, to the southwest corner of the lot in the twenty-third northern, and fifth western ranges; then north to the south line of great lot number four; then westerly on said line, to the corner of lots number nine hundred and four, and nine hundred and forty-two, of great lot number four; then northerly on the line between lots number nine hundred and four, and nine hundred and forty-two, to the southerly line of lot number nine hundred and five; then westerly along said line to the most westerly corner of said lot number nine hundred and five; then northerly on the line between lots number nine hundred, and nine hundred and five, and the same course continued to the most westerly corner of lot number nine hundred and eight; then westerly on the line between lots number eight hundred and ninety-seven, and eight hundred and ninety-eight, and the same course continued to the most westerly corner of lot number eight hundred and fifty; then along the line of lots to the bounds of the county of St. Lawrence, at the northeast corner of lot number eight hundred and thirty-four; then northwesterly along the westerly bounds of the county of St. Lawrence, to the north bounds of this state; then westerly and southerly along the said north bounds, to a point west from the place of beginning, and then east to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 34.]

NOTE.—The names of the towns in Jefferson county have been changed since the foregoing description was prepared.

The town of Minos is now Ellisburg. The town of Atticus is now the town of Lorraine. The town of Fenelon is now the town of Worth. The town of Orpheus is now the town of Rodman. The town of Milan is now the town of Rutland. The town of Howard is now the town of Champion.

23. *Kings*.—The county of Kings shall contain all that part of this state, bounded easterly, by Queens county; northerly, by the county of New York; westerly, by the middle of the main channel of the Hudson river, from the southern boundary of the county of New York, to the ocean; and southerly, by the Atlantic ocean; including Coney Island and Barren Island, together with all the islands south of the town of Gravesend.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 3.]

NOTE.—The following statutes [L. 1867, ch. 444, and L. 1881, ch. 624] refer to and affect Kings county:

The report of the commissioners referred to in L. 1867, ch. 444, does not appear to be on file in the office of the secretary of state.

L. 1896, ch. 488, was a consolidation of certain municipalities in Kings, Richmond and Queens counties, in the mayor, aldermen and commonalty of New York; it did not affect the counties.

L. 1911, ch. 890.

Consolidators' notes.

§ 1. Within thirty days after the passage of this act, the county judge of Kings county shall appoint three commissioners, and the county judge of Queens county a similar number, who, together, shall constitute a commission to determine and establish a division line between the counties of Kings and Queens, across Jamaica bay, extending from the termination of the line on the mainland to Rockaway beach. The said commissioners shall file their report determining such line in the office of the secretary of state, and thereupon such line shall be the division between the said counties for the territory thereby divided.

[L. 1867, ch. 444, § 1.]

§ 1. The boundary line between Kings and Queens counties, from the city of Brooklyn to the Atlantic ocean, is hereby fixed and defined as follows, as now marked by monuments: Beginning at a point in the southeast line of the city of Brooklyn, at a monument formerly marking the junction of the towns of Bushwick, Newtown and New Lots, and running thence north, sixty-four degrees east, twelve hundred and forty-two and two-tenths feet; thence north, fifty-nine degrees thirty minutes east, thirteen hundred and sixty-seven and four-tenths feet; thence north, forty-six degrees thirty minutes east, six hundred and thirty-eight and forty-five one-hundredths feet; thence north, sixty-eight degrees east, twelve hundred and twenty and forty-five one-hundredths feet to the southeast corner of Ridgwood reservoir; thence north, fifty-three degrees forty-eight minutes east, seventeen hundred and sixty feet to flag-staff in national cemetery; thence north, sixty-six degrees thirteen minutes east, fifteen hundred and eighty-five and fifty-three one-hundredths feet to the center of the observatory in Cypress Hills cemetery; thence north, eighty-seven degrees twenty-three minutes east, fourteen hundred and sixty-seven and thirty-nine one-hundredths feet to the monument between towns of Newtown, Jamaica and New Lots; thence south, three degrees twenty minutes east, sixteen hundred and forty-eight feet to center of Eldert's lane, on the south side of the Brooklyn and Jamaica plank-road; thence south, two degrees six minutes east, nine hundred and thirty-six and twenty-five one-hundredths feet along the center of said lane; thence south four degrees ten minutes east, six hundred and forty-six and thirty-three one-hundredths feet along the center of said lane; thence south, four degrees twenty-four minutes east, five hundred and forty-nine and seventy-five one-hundredths feet along the center of said lane; thence south, one degree nineteen minutes west, seven hundred and forty-seven and twenty-five one-hundredths feet along the center of said lane to the line of curbstone on the north line of Atlantic avenue, the last four courses being along the center of said lanes as it is now, but the boundary to be along the center of said lane, when straightened to conform to town survey map; thence south, thirty-eight degrees twenty-three minutes east, nine hundred and fifty feet; thence south, eight degrees thirty-five minutes east, twenty-five hundred and fifty-nine and twenty-three one-hundredths feet to the center of the conduit of Ridgwood water-works, where said conduit crosses Spring creek, formerly known as the "Kill east of Plunden's Neck;" thence along the center of said creek (sometimes called "Old Mill creek") to a point at its mouth, marked on coast survey map of Jamaica bay, dated eighteen hundred and seventy-nine, accompanying the report of the committee appointed to fix said boundary line; thence south, thirty degrees east, eleven thousand eight hundred and eighty-one and six-tenths feet to a point on a marsh, sometimes called Black Bank, east of so-called Big Poll channel; thence south, ten degrees west, eight thousand and ninety-five feet to a point on so-called Cart Wheel Marsh; thence south, thirty-eight degrees fifteen minutes west, in range with Life Saving Station House Number Thirty-three, to the center of Beach channel, and thence westerly along the center of Beach channel to Rockaway inlet; thence along the center of Rockaway inlet to the sea.

[L. 1881, ch. 624, § 1.]

24. Lewis.—The county of Lewis shall contain all that part of this state, bounded as follows: Beginning at the southeast corner of the county of Jefferson, and running thence southerly along the easterly bounds of the townships numbers seven and twelve in Constable's patent to the north bounds of Scriba's patent; then along the same easterly to the northeast corner thereof; then north sixty-two degrees east along the southerly line of Macomb's purchase, to the line of the county of Herkimer; then north along the west bounds of the county of Herkimer to the bounds of the county of St. Lawrence; then along the south-westerly bounds of the said county to the line of the county of Jefferson; and then along the easterly bounds of the said county to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 33.]

NOTE.—The boundary line between Herkimer and Hamilton county mentioned in L. 1900, ch. 439, is on file in the office of the state engineer and surveyor.

See also L. 1902, ch. 473, in note to Franklin county.

The statute of 1852, ch. 169, relates to and affects the county of Lewis.

The boundary line referred to therein does not appear to be on file.

§ 1. The commissioners of the land office shall cause the boundary line between the counties of Herkimer and Lewis to be surveyed, permanently established, and plainly marked; said survey to be made as soon as in their judgment may be deemed practicable, the expense thereof to be paid by the treasurer, on the warrant of the comptroller, out of any moneys in the treasury, not otherwise appropriated.

[L. 1852, ch. 169, § 1.]

25. Livingston.—The county of Livingston shall contain all that part of this state, bounded as follows: Beginning in the south bounds of township number seven, fifth range of Phelps and Gorham's purchase, at a point five and a half miles east of the southwest corner thereof, and running thence west along the south bounds of said township number seven of the sixth range to the northwest quarter of township number six of the sixth range; then along the east, south and west bounds of said quarter to the northeast corner of township number six of the seventh range; then along the north bounds of said township west, to the southwest corner of township number seven of the seventh range; then along the west bounds thereof north, till intersected by a continuation of the north bounds of township number seven in the first range of the Holland Company's purchase; then west along said continuation to the middle of the Genesee river; then down the said middle to a continuation of the east bounds of the Ogden tract; then north along said continuation and said bounds, and the same continued north, to the division line between lots number nineteen and twenty of the forty thousand acre tract; then east along said division line to the southeast corner of lot number twenty-seven of said tract; then north along the east bounds of lots number twenty-seven, twenty-six and twenty-five to township number one in the second range of Phelps and Gorham's purchase on the west side of Genesee river; then along the south bounds thereof to the southwest corner of lot number one hundred and seventeen, in said township; then north along the line of lots so far as that a line drawn due east will strike one mile north of the house now or late of Peter Bowen; then east along said line to the middle of Genesee river; then along the said middle to the northwest corner of township number ten in the seventh range of townships in Phelps and Gorham's purchase; then easterly to the west bounds of township number ten in the sixth range of said purchase; then northerly to the north bounds of said township; then easterly along the north bounds thereof, and of township number ten in the fifth range to the middle of the Huneoye creek; then along said middle to the south bounds of said last mentioned township; then west on the division line between townships number nine and ten to the northeast corner of a tract called the oblong tract, lying east of township number nine in the sixth range; then south along the said tract to the north bounds of township number eight in the fifth range; then west along the north bounds of said township and of township number eight in the sixth range to the east shore of the Hemlock lake; then southerly and westerly along said lake to the west bounds of township number eight of the fifth range; then along the same, south, to the southwest corner thereof; then along the south bounds thereof, east five and a half miles; then with a line parallel to the east bounds of township number seven in the fifth range, south to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 48.]

NOTE.—The following statutes refer to and affect the county of Livingston:

§ 1. The towns of Nunda and Portage in the county of Allegany are hereby annexed to the county of Livingston.

[L. 1846, ch. 197, § 1.]

The town of Ossian, in the county of Allegany, is hereby annexed to the county of Livingston.

[L. 1857, ch. 166, § 1.]

§ 1. William S. Fullerton of the county of Livingston, Freeman Edson of the county of Monroe, and Byram Moulton of the county of Genesee, are hereby created and appointed commissioners to ascertain, determine and establish the boundary line between the town of Wheatland in the county of Monroe, and the town of Caledonia in the county of Livingston.

§ 3. Such commissioners, at the time of their first meeting as aforesaid, shall have power and they are hereby authorized to employ competent surveyors, to

L. 1911, ch. 890.

Consolidators' notes.

issue subpoenas, to send for persons and papers, and compel the attendance of witnesses before them, to administer oaths to such witnesses by their chairman who shall be appointed by them at said meeting, and to do all and every the acts and things necessary to be done in the premises aforesaid.

§ 4. The said commissioners, after hearing all matters in relation to said boundary line as aforesaid, shall make a final report in writing setting forth specifically the true boundary line as aforesaid, and shall cause copies thereof to be filed in the office of the clerk of the respective counties aforesaid; which finding and report of the commissioners shall be final and conclusive.

[L. 1860, ch. 109, §§ 1, 3, 4.]

The undersigned employed by the commissioners appointed by the legislature to establish the boundary line between the counties of Monroe and Livingston from the Genesee river to the eastern bounds of Genesee county, beg leave to report as follows:

That in conformity with the instructions of the said commissioners, they measured as accurately as practicable with a chain one mile due north from the house formerly occupied by Peter Bowen in the town of Caledonia, and surveyed a due east and west line intersecting the point and running from Genesee county to the Genesee river. They ascertained the true meridian line by an observation on the north star finding the variation of the magnetic needle at the mile point 2° 52' west, and surveyed the line with a transit instrument and a revolving telescope.

The said line passes south of the southwest corner of the house known as the Allen Smith house, three chains sixty-five links distant south of the southwest corner of Alice Bowerman's barn two chains and twenty-five links distant, and intersects the west line of the River road at a point three chains fifty-six links south of the apparent south line of the east and west road next north of Ambrose Cox house.

SILAS CORNELL,
Surveyor.
WM. CUSHING,
Surveyor.

Wheatland, June 15, 1860.

The first observation of the polar star having been made at the time of its greatest elongation, the commissioners deemed it expedient to make another observation when it could be seen at its meridian in order to insure perfect accuracy. The undersigned accordingly met at Wheatland on Monday, August 14th, by direction of said commissioner and took another observation the succeeding night.

They found the variation of the magnetic needle to be practically the same as they found it before. They also resurveyed about a mile of the line and found it to agree with the former survey.

Caledonia, August 15, 1860.

SILAS CORNELL,
WM. CUSHING.

Filed in Monroe county September 6, 1860.

26. Madison.—The county of Madison shall contain all that part of this state bounded as follows: Beginning on the Unadilla river, at the southeast corner of township number eighteen, of the twenty townships, and running thence northerly along the same to the northeast corner of township number nineteen; then westerly along the north bounds thereof, to the east boundary line of township number three; then north along the same to the northeast corner thereof; then westerly along the north bounds thereof, and of the said twenty townships, westerly to the southwest corner lot number fifty, in the first allotment of a tract called New-Petersburgh; then northerly on the west line of said lot number fifty and of lot number sixty-nine, to the south line of New-Stockbridge; then the shortest line to the main branch of the Oneida creek; then northerly down said creek to the Oneida lake, and thence westerly along the southerly shore of Oneida lake to the military tract; westerly, by part of the east bounds of the said military tract; and southerly, by the north bounds of the county of Chenango.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 31.]

NOTE.—The following statutes relate to and affect the county of Madison:

A division of the town of Lenox into the towns of Lenox, Oneida and Lincoln by L. 1896, ch. 352, does not appear to affect the boundaries of the county.

§ 1. From and after the passing of this act, all that part of the towns of Vernon and Augusta, in the county of Oneida, and of Smithfield and Lenox, in the county of Madison, comprehended with the following bounds, to wit: Begin-

ning at the northeast corner of lot number three, mile tract, New-Stockbridge purchase of eighteen hundred and twenty-two, from thence running south one degree west, upon the west line of the school lot to the south line of Augusta; thence north eighty-eight degrees west, along the north line of the towns of Madison and Eaton, four miles and thirty-eight rods to a stake and stones; thence north one degree east, to the north line of the town of Smithfield; thence north eighty-eight degrees west, along the north line of said Smithfield one mile, to the northeast corner of lot number seventy-three; thence north one degree east, to the northwest corner of the Stockbridge reservation; thence south eighty-nine degrees east, along the north line of said reservation, to the place of beginning, shall constitute a new town by the name of Stockbridge; and the first town meeting shall be held at the house of Elisha A. Clark, on the first Tuesday of June next.

§ 2. The said town of Stockbridge shall be and constitute a part of the county of Madison.

[L. 1836, ch. 393, §§ 1, 2.]

§ 1. Delos DeWolf and Oliver R. Babcock of the town of Bridgewater, Oneida county, and David R. Carrier of the town of Winfield, Herkimer county, are hereby appointed commissioners with powers to examine into the facts and circumstances in reference to the points in dispute between the towns of Plainfield in Otsego county and Brookfield in Madison county, and to determine according to the rights of the case, the proper boundary line between the said towns.

§ 2. The commissioners appointed by the preceding section, shall file a copy of their decision with the clerk of each of the towns interested therein, and also with the clerk of each of the counties of Otsego and Madison.

[L. 1843, ch. 222, §§ 1, 2.]

§ 1. The present channel of the Oneida creek, as straightened and rectified, is hereby declared to be and made the boundary line between the counties of Oneida and Madison, from the northerly line of the town of Stockbridge to Oneida lake.

§ 2. Nothing in this act shall be construed to affect or impair liens acquired upon the portions of either of said counties, which are, by the provisions of the first section of this act, added to or taken from either of said counties.

[L. 1879, ch. 91, § 1.]

27. **Monroe.**—The county of Monroe shall contain all that part of this state, bounded as follows: Beginning in the north bounds of the state, at a point due north of the northwest corner of the tract called the Triangle, and running thence south to the said northwest corner; then south along the west bounds of said tract, to the north bounds of township number two in said Triangle; then east along the north bounds of said township to the east bounds of said Triangle; then southwesterly along the same to the north bounds of township number one in the second range of Phelps and Gorham's purchase on the west side of Genesee river; then along the north bounds thereof, to the northwest corner of lot number fifty-four of said township; then southerly along the west bounds of lots number fifty-four, sixty, and sixty-six, and the same course continued to the county of Livingston; then along the bounds of said county to the middle of Huneoye creek; then along the south bounds of township number eleven in the fifth range of Phelps and Gorham's purchase to the southeast corner thereof; then north along the east bounds thereof, to the northeast corner thereof; then east along the north bounds of township number eleven in the fourth range to the northeast corner thereof; then north along the dividing line between the third and fourth ranges of said purchase, and the same continued to the north bounds of the state; and then westerly along the same to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 49.]

NOTE.—See L. 1860, ch. 109, and copy of document, in note to Livingston county.

28. **Montgomery.**—The county of Montgomery shall contain all that part of this state, bounded northerly, by the south bounds of the county of Hamilton; easterly, by the counties of Schenectady and Saratoga; southerly and westerly, by the following lines: Beginning at the northeast corner of a tract granted to George Ingoldsby and others, and running thence southwesterly along the northerly bounds thereof, and of the patents granted to Walter Butler, Thomas Freeman, and Alexander Philip and William Cosby, and along the same line continued to the patent of John Bowen; then along the bounds thereof southerly and westerly to the northeast corner of the old Schoharie patent, granted to Myndert Schuyler; then westerly along a line run by order of the surveyor-general, in pursuance of an act passed the thirtieth day of March, one thousand eight hundred and nine, to the southeast corner of a tract granted to William Cosby; then westerly

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along the same and along a tract granted to John Lyne, to the southwest corner thereof; then westerly along the north bounds of the county of Otsego, to a line drawn southerly from a point on the southerly bank of the Mohawk river, opposite the mouth of East Canada creek, and parallel to a line run from the Little Falls in the Mohawk river, to the mouth of the creek on which the mills formerly of Richard Carey were erected; then northerly with a straight line to the mouth of the East Canada creek; then up the said creek to the point where the south bounds of the tract called Jerseyfield intersects the said creek; and then north to the county of Hamilton.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 21.]

Excepting from the territory above described so much thereof as was erected into the county of Fulton by L. 1838, ch. 332.

[L. 1838, ch. 332.]

29. Nassau.—All that territory now comprised within the limits of the towns of Oyster Bay, North Hempstead and Hempstead in the county of Queens is hereby set off from the county of Queens and is erected into the county of Nassau and is a separate and distinct county of the state of New York.

[L. 1898, ch. 588, § 1, pt.]

NOTE.—The following statute refers to and affects Nassau county:

§ 2. All that part of the city of New York excluded therefrom by this act, to wit: That part of the former town of Hempstead which is westerly of a straight line drawn from the southeasterly point of the former town of Flushing, through the middle of the channel between Rockaway beach and Shelter island to the Atlantic ocean, except that portion of said town of Hempstead lying west and south of the east and north boundaries of the former village of Far Rockaway, and west of a straight line drawn from the northwest corner of said village due north to the south line of the former town of Jamaica, is hereby annexed to and shall hereafter form a part of the town of Hempstead, in the county of Nassau. A former town or village referred to in this section means such a town or village as it existed on the thirty-first day of December, eighteen hundred and ninety-seven.

[L. 1899, ch. 379, § 2.]

30. New York.—The county of New York shall contain the islands called Manhattan's Island, Great Barn Island, Little Barn Island, Manning's Island, Nutton Island, Bedlow's Island, Bucking Island, and the Oyster islands; and all the land under water within the following bounds: Beginning at Spuyten Duyvil creek, where the same empties itself into the Hudson river on the Westchester side thereof, at low water mark, and running thence along the said creek, at low water mark, on the Westchester side thereof, to the East river or Sound; then to cross over to Nassau, or Long Island, to low water mark there, including Great Barn Island, Little Barn Island, and Manning's Island; then along Nassau or Long Island shore, at low water mark, to the south side of the Redhook; then across the North river so as to include Nutton Island, Bedlow's Island, Bucking Island, and the Oyster islands, to the west bounds of the state; then along the west bounds of the state, until it comes directly opposite to the first mentioned creek, and then to the place where the said boundaries began.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 5.]

NOTE.—The following statutes refer to and affect New York county:

§ 1. Section one of chapter six hundred and thirteen of the laws of eighteen hundred and seventy-three, entitled "An act to provide for the annexation of the towns of Morrisania, West Farms and Kingsbridge, in the county of Westchester, to the city and county of New York," is hereby amended so as to read as follows:

§ 1. All that territory now comprised within the limits of the towns of Morrisania and West Farms and Kingsbridge, in the county of Westchester, with the inhabitants and estates therein, is hereby set off from the county of Westchester and annexed to, merged in, and made part of the city and county of New York, and shall hereafter constitute a part of the city and county of New York, subject to the same laws, ordinances, regulations, obligations and liabilities, and entitled to the same rights privileges, franchises and immunities in every respect, and to the same extent, as if such territory had been included within said city and county of New York at the time of the grant and adoption of the first charter and organization thereof, and had so remained up to the passage of this act.

[L. 1873, ch. 613, § 1, as amended and re-enacted by L. 1874, ch. 329, § 1, pt.]

§ 1. All that territory comprised within the limits of the North Brothers island, being the northerly island of the islands called the Two Brothers, in the county of Queens, with the inhabitants and estates therein, is hereby set off

from the county of Queens, annexed to, merged in, and made part of the city and county of New York, and shall hereafter constitute a part of the city and county of New York, subject to the same jurisdiction, laws, ordinances, regulations and liabilities, and entitled to the same rights, privileges, franchises and immunities in every respect, and to the same extent as if such island had been included within the said city and county of New York at the time of the adoption of the first charter and organization thereof, and had so remained up to the passage of this act; except, however, that until constitutionally and legally changed, said territory shall remain in and constitute a part of the same election district in which the said territory has heretofore been subject to existing laws.

§ 2. The territory hereby annexed shall be, and is hereby constituted a part of the twenty-third ward of the city of New York, subject to the laws, regulations, ordinances and jurisdiction then in force or hereafter established.

[L. 1881, ch. 478, §§ 1, 2.]

§ 1. The city and county of New York shall contain the islands called Manhattan island, North Brother's island, Great Barn or Ward's island, Little Barn or Randall's island, Manning's or Blackwell's island, Nutton or Governor's island, Bedloe's island, Bucking or Ellis island, and the Oyster islands; and also all the territory which formerly constituted the towns of Morrisania, West Farms and Kingsbridge, in the county of Westchester, being all the territory which lies westerly of the center of the Bronx river, and southerly of a line commencing in the center of the Bronx river, at latitude forty degrees, fifty-three minutes, fifty-nine and twenty-three one-hundredths seconds north, and longitude seventy-three degrees, fifty-one minutes, thirty-five and sixty-seven one-hundredths seconds west of Greenwich, and running on a straight line westerly to a point on the low water-mark of the eastern bank of the Hudson river at latitude forty degrees, fifty-four minutes, fifty-three and twenty-one one-hundredths seconds north, and longitude seventy-three degrees, fifty-four minutes, thirty-eight and sixty-four one-hundredths seconds west of Greenwich, and thence westerly in a straight line to the west bounds of the state; together with all the land under water within the following bounds: Beginning at Spuyten Duyvil creek, where the low-water mark of the northern bank thereof intersects the low-water mark of the eastern bank of the Hudson river, and running thence along said creek at low-water mark on the northern side thereof to the Harlem river, thence along the low-water mark on the eastern bank thereof to the Bronx kills; thence along the low-water mark on the northern bank thereof to the low-water mark on the northwestern shore of Long Island sound, thence along the low-water mark of the northwestern and northern shore of Long Island sound to the mouth of the Bronx river at Hunt's point; thence along the low-water mark as far as the same may extend in the Bronx river, and the mouth thereof to the low-water mark of Long Island sound at the western side of Clauson's Point; thence across Long Island sound to College Point on Nassau or Long Island to low-water mark there; thence southwesterly across Flushing bay to low-water mark at Sandford's Point, between Flushing and Bowery bays, including Great Barn or Ward's island, and Little Barn or Randall's island; then along Nassau or Long Island shore, at low-water mark, and including Manning's or Blackwell's island, to the south side of the Red Hook; then across the North river so as to include Nutton or Governor's island, Bedloe's island, Bucking or Ellis island, and the Oyster islands, to the west bounds of the state; and thence northerly along the west bounds of the state to the junction with the above-mentioned prolongation westerly of the northern boundary line of the city and county of New York, from the low-water mark on the eastern bank of the Hudson river; thence easterly along said line to the easterly bank of the Hudson river at low-water mark; thence southerly along said easterly bank, at low-water mark, to the point or place of beginning.

[L. 1882, ch. 410, § 1.]

§ 1. All that territory comprised within the limits of the towns of Westchester, Eastchester and Pelham which has not been annexed to the city and county of New York at the time of the passage of this act, which lies southerly of a straight line drawn from the point where the northerly line of the city of New York meets the center line of the Bronx river, to the middle of the channel between Hunter's and Glen islands, in Long Island sound, and all that territory lying within the incorporated limits of the village of Wakefield, which lies northerly of said line, with the inhabitants and estates therein, is hereby set off from the county of Westchester and annexed to, merged in and made part of the city and county of New York, and of the twenty-fourth ward of the said city and county, and shall hereafter constitute a part of the city and county of New York,

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and of the twenty-fourth ward of said city and county, subject to the same laws, ordinances, regulations, obligations and liabilities, and entitled to the same rights, privileges, franchises and immunities, in every respect, and to the same extent as if such territory had been included within said city and county of New York at the time of the grant and adoption of the first charter and organization thereof, and had so remained up to the passage of this act, and, except as may be modified by the provisions herein contained, as if such territory had been included within said twenty-fourth ward by the provisions of chapter six hundred and thirteen of the laws of eighteen hundred and seventy-three, entitled "An act to provide for the annexation of the towns of Morrisania, West Farms and Kingsbridge, in the county of Westchester, to the city and county of New York," and the several acts amendatory thereof, and had so remained up to the passage of this act.

[L. 1895, ch. 934, § 1.]

See note to Nassau county, L. 1899, ch. 379, § 2.

31. **Niagara.**—The county of Niagara shall contain all that part of this state, bounded easterly, by the counties of Orleans and Genesee; northerly and westerly, by the bounds of the state; and southerly, by the bounds of the state, the middle of the Niagara river on the northerly side of Grand island, and the Tonnewanta creek.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 52.]

NOTE.—"Tonnewanta" creek is now known as Tonawanda creek.

32. **Oneida.**—The county of Oneida shall contain all that part of this state, bounded northerly by the county of Lewis and a small part of the county of Oswego; westerly, southwesterly and southerly, by the counties of Oswego and Madison, and a small part of the county of Otsego; and easterly, by the county of Herkimer.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 30.]

NOTE.—See L. 1836, ch. 393, § 12; L. 1879, ch. 91, § 1, as to boundary line between Madison and Oneida counties, in note to Madison county.

33. **Onondaga.**—The county of Onondaga shall contain all that part of this state, bounded as follows: Beginning in the east bounds of the military tract, at the northeast corner of lot number sixty, in the township of Fabius, and running thence, northerly along the east bounds of said tract, to the Oneida lake; then northwesterly along the Oneida lake, to the place where the Onondaga or Oswego river issues therefrom; then northerly, southerly and northwesterly along the said river as the same winds and turns, to the southeast corner of lot number thirty-three, in the township of Lysander; then westerly along the south line of said lot and the lots in the same range, to the west line of said township; then southerly along the west line of said township, to the Cross lake; then west to the middle of said lake; then through the middle of said lake, and the middle of the Seneca river, to a continuation of the west line of the township of Camillus; then along the same, and along the west line of the said township, to the southwest corner of the said township of Camillus; then easterly along the south bounds of said township, to the northwest corner of the township of Marcellus; then along the westerly and southerly lines of the township of Marcellus, to the Skeneateles lake; then southeasterly along the shore of the same, to the northwest corner of the county of Cortland; and then easterly along the north bounds of said county, to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 42.]

34. **Ontario.**—The county of Ontario shall contain all that part of this state, bounded as follows: Beginning at the northeast corner of the county of Yates, and running thence along the bounds of the said county, to the southwest corner thereof; then westerly along the north line of townships number six in the fourth and fifth ranges of Phelps and Gorham's purchase, to the southeast corner of the county of Livingston; then along the bounds of the said county, to the south bounds of the county of Monroe; then along the bounds of the said county, to the southwest corner of the county of Wayne; then along the south bounds of the said county, to the northwest corner of the county of Seneca; and then southerly along the west bounds of the said county of Seneca, to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 45.]

35. **Orange.**—The county of Orange shall contain all that part of this state, bounded easterly, by the middle of Hudson's river; southerly, by the county of Rockland, and the division line between this state and the state of New Jersey; westerly, by the river Mongaup, and the division line between this state and the state of Pennsylvania; and northerly, by a line drawn from a point in the middle

of Hudson's river, opposite the northeast corner of a tract granted to Francis Harrison and company, called the five thousand acre tract, to the same northeast corner; and running thence westerly along the north bounds of the same tract, and the north bounds of another tract granted to the said Francis Harrison, to the tract commonly called Wallace's tract; then along the lines of the same, northerly and westerly, to the northeasterly bounds of a tract granted to Jacobus Kip, John Cruger and others; then westerly along the northeasterly and northerly bounds thereof, to the northwest corner of the same; then westerly to the northeast corner of a tract of three thousand five hundred acres granted to Rip Van Dam and others; then southerly along the same, to the northeast corner of a tract of three thousand acres granted to Henry Wileman; then along the north bounds thereof to the Paltz river, commonly called the Wallkill, then southerly up the said river to the southeast corner of a tract of four thousand acres granted to Gerardus Beekman and others; then westerly and northerly, along the southerly and westerly bounds thereof, to the northeast corner thereof; then northwesterly along the north bounds of the tract granted to Jeremiah Schuyler and company, to the middle of the Shawangunk kill; then southwesterly through the middle of said kill, to the north part of the farm formerly in the occupation of Joseph Wood, junior; and then west to the said river Mongaap.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 10.]

36. Orleans.—The county of Orleans shall contain all that part of this state, bounded easterly, by the county of Monroe; northerly, by the north bounds of the state; westerly, by a meridian line between the fourth and fifth ranges of townships of the Holland Company's purchase, and said line continued north to the bounds of the state; and southerly, by the division line between the thirteenth and fourteenth townships in said purchase, continued east to the transit line; then along said line to the northwest corner of lot number eighty-five, in the tract called the Connecticut tract; and then east along the line of lots to the west bounds of the county of Monroe.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 51.]

37. Oswego.—The county of Oswego shall contain all that part of this state, bounded as follows: Beginning in the bounds of this state at the southwest corner of the county of Jefferson, and running thence easterly along the south bounds of said county of Jefferson to the southeast corner of the township of Fenelon; then southerly along the line of townships to the north bounds of Scriba's patent; then westerly along the same to the northeast corner of township number five of said patent; then southerly along the east bounds of said township and of township number six to the north bounds of township number eleven; then easterly along said north bounds to the northeast corner thereof; then southerly along the east bounds thereof and the same continued to the north bounds of the county of Madison; then westerly along the same to the northeast corner of the county of Onondaga; then westerly along the north line of the said county to the northwest corner thereof; then north to the south line of the township of Hannibal; then west along the south bounds of said township to the west line of said township; then north along the west bounds thereof and the same course continued to the northern bounds of the state; and then along the same to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 32.]

38. Otsego.—The county of Otsego shall contain all that part of this state, bounded southerly, by the county of Delaware; easterly, by the county of Schoharie; westerly, by the middle of the westerly branch of the Unadilla river; northerly, by a line beginning at the Unadilla river, in the south bounds of a tract formerly granted to William Bayard and others, called the Freemasons' patent, and running thence easterly along the south bounds of said tract, to the west bounds of the tract called Cochran's patent; then south along said bounds to the southwest corner thereof; then easterly along the south bounds of said patent, and the same line continued to the southeast corner of lot number seventy-three, in the tract granted to David Schuyler and others; then northerly in a straight line to the northeast corner of lot number seventy-one in the same tract; then easterly along the southerly bounds of the tract granted to Rudolph Staley and others, and the southerly bounds of a tract granted to Theobald Young, to a line run from the Little Falls in the Mohawk river, to the mouth of a creek on which the mills formerly of Richard Carey were erected; then northerly along said line until the same is intersected by a western continuation of the north bounds of a tract called Springfield; then easterly along such continuation, and along the north bounds of said tract, to the northeast corner thereof; and then easterly to the northwest corner of the county of Schoharie.

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[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 35.]

NOTE.—See L. 1843, ch. 222, §§ 1, 2, regarding boundary line between counties of Madison and Otsego, in note to Madison county.

39. Putnam.—The county of Putnam shall contain all that part of this state, bounded south, by the county of Westchester; easterly, by the east bounds of the state; northerly, by a line beginning in the middle of Hudson's river, west of the southwesternmost end of Break-neck hill, and running thence east to the southwesternmost end of said hill; then north fifty-two degrees east, to the north bounds of the lands granted to Adolph Philipsie; then along the same east, to the east bounds of the state; and westerly by the middle of Hudson's river.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 7.]

40. Queens.—The county of Queens shall contain all that part of this state, bounded easterly, by Suffolk county; southerly, by the Atlantic ocean; northerly, by the Long Island Sound; and westerly, by the west bounds of the townships of Newtown and Jamaica; including Lloyd's Neck, or Queen's village, and the islands called the Two Brothers, and Hallet's Island, and all the islands in the sound opposite to the said bounds, and southward of the main channel.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 2.]

Excepting from the territory above described so much thereof as was erected into the county of Nassau by L. 1898, ch. 588.

[L. 1898, ch. 588.]

NOTE.—L. 1896, ch. 488, was a consolidation of certain municipalities in Kings, Richmond and Queens counties, in the mayor, aldermen and commonalty of New York; it did not affect the counties.

The following statutes affect and relate to Queens county.

Whereas, A dispute has arisen between the officers of the town of Oyster Bay, in the county of Queens, and the officers of the town of Huntington, in the county of Suffolk, respecting the boundary of said towns, which constitutes the dividing line between them; and, whereas, such dispute has been represented to me by the officers of said towns, to wit: By David R. Floyd Jones, supervisor of the town of Oyster Bay, in the county of Queens, and Charles A. Floyd, supervisor of the town of Huntington, in the county of Suffolk. Now, therefore, pursuant to section five, title six, chapter eight, part first of Revised Statutes of this state, I do hereby determine and declare that the line, as hereinafter particularly set forth and described, is the line by law intended and established as the dividing line between the aforesaid towns of Oyster Bay and Huntington, viz.: Beginning at a point as the head of Cold Spring, where formerly stood a white oak tree with H marked on one side and O on the other, and now a heap of stones, as fixed on and determined by Thomas Townsend, Nathaniel Coles and John Wicks, commissioners appointed on the part of Oyster Bay, and Thomas Powell and Abiel Titus, commissioners on the part of Huntington, in the year sixteen hundred and eighty-four, as the head of Cold Spring; from thence southerly in a direct and straight line to the head of the river on the south side of the island, called by the Indian name of Wanushetuc, and by the inhabitants Latting creek, at a monument there, and on which part of the line monuments have been erected along the whole extent thereof, at distances of one mile from each other, agreeable to a map made thereof by William J. Weeks, a surveyor employed for that purpose by David R. Floyd Jones, a commissioner appointed on the part of Queens county, and Charles A. Floyd, a commissioner appointed on the part of Suffolk county, and under their direction, which said map is herewith filed in the office of the secretary of state, reference thereto will more fully and at large appear. And from said monument at the head of said river or creek, southerly through the middle of said creek till it comes opposite the southeast point of Oyster Bay, south meadows; and from thence westerly to the southeast point of said meadows, at a monument there fixed by Richard Hatfield, Ebenezer Purdy and Elias Newman, of Westchester county, commissioners appointed under an act of the legislature to settle and determine such part of the line of division between the towns of Oyster Bay and Huntington, as is therein mentioned, passed February seventeenth, seventeen hundred and ninety-seven; and from thence southerly to the northernmost island or marsh in the south bay, called Townsend's island, at a monument erected by said commissioners, on the north side thereof; and from said last mentioned monument, in one continued straight line across the said bay and marshes to the beach, at a monument there erected by said commissioners; and from thence in the same direction to the Atlantic ocean; and again beginning at the heap of stones at the head of Cold Spring, and from thence northerly till it comes to the brook or flow of water; and thence northerly through the middle of the brook and mill ponds, till it comes to a

monument on the lower or northernmost mill dam; and from thence northerly along the middle of the main channel of the bay on or near the eastern shore, until it comes to the middle of the channel, between Oyster Bay beach and Huntington beach, and so on northerly as the line now runs to a spot known and designated as Fleets Hole; "and thence through the middle of Fleets Hole northerly till it comes to the boundaries between Henry Lloyd, of Queens village, and the township of Huntington, on the beach as established by commissioners in seventeen hundred and thirty-four; and from thence easterly the middle of the channel to be the bounds between the manor of Queens village and the town of Huntington, till it comes to a certain weir, erected by the inhabitants of Huntington for the taking and catching of fish; and from thence northerly to the middle of the inlet, river or creek, between the upland of Queens village and the upland of Huntington west neck; from thence running easterly along the middle of said inlet, river or creek, until it comes against a point on Queens village shore, called Conklin's Point; and from thence upon a straight line to the middle of that part of the river or creek that runs between the outward point of the east beach putting off from Queens village shore and the highest land upon Huntington shore." And I do hereby declare, at the request of the before named gentlemen, Jones and Floyd, the representatives of the two towns interested, as well as my conviction of the justice thereof, and in conformity to the statute in that case made and provided, that the line established as aforesaid shall not affect the title or possession of any person or persons along the said line, either in the confirmation of title or in impairing the same, but for the purpose of jurisdiction only, that property now or heretofore bounded by the Suffolk or Queens county line or Oyster Bay or Huntington line, shall continue to be bounded by the line as heretofore supposed to exist, and not by the line herein established. Given under my hand at the office of the state engineer and surveyor of the state of New York, this first day of March, in the year one thousand eight hundred and sixty.

VAN R. RICHMOND,

State Engineer and Surveyor.

[L. 1860, ch. 530. This chapter is not preceded by an enacting clause, and appears at the end of L. 1860, under the heading, "New towns erected or boundaries altered by the boards of supervisors," etc.]

See L. 1867, ch. 444, § 1, and L. 1881, ch. 624, § 1, for boundary line between counties of Kings and Queens, in note to Kings county. Also, L. 1881, ch. 478, §§ 1, 2, as to boundary line between counties of New York and Queens, in note to New York county.

§ 1. All that part of the town of Oyster Bay, in Queens county, known and designated in the laws of this state as Lloyd's Neck, bounded as follows: Commencing at high-water mark, west by Cold Spring harbor and Long Island sound; north by Long Island sound; east by Huntington bay, and southerly by the present boundary line between the towns of Huntington and Oyster Bay, is hereby set off and separated from the residue of said town of Oyster Bay, Queens county, and annexed to said town of Huntington, county of Suffolk; and from and after the passage of this act the territory thus set off shall be and constitute a part of the town of Huntington and a part of the county of Suffolk.

[L. 1886, ch. 667, § 1.]

§ 1. The boundary line between the counties of Queens and Suffolk is hereby extended northwardly into Long Island sound at a right angle to the general trend of the coast until it intersects the boundary line between the states of New York and Connecticut, as lately established by the commissioners of the said states, and confirmed by the respective legislatures thereof.

[L. 1881, ch. 695, § 1.]

41. Rensselaer.—The county of Rensselaer shall contain all that part of this state, bounded easterly, by the eastern bounds of this state; southerly, by the county of Columbia; westerly, by the middle of the main stream of Hudson's river, with such variations as to include the islands lying nearest to the east bank thereof; and northerly, by a line beginning at the mouth of Lewis' creek or kill, and running thence south eighty-four degrees east, to the middle of Hosick river; then up along the same, until it is intersected by a continuation of the before mentioned line, and then along such continuation, to the east bounds of the state.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 17.]

42. Richmond.—The county of Richmond shall contain the islands called Staten Island, Shooter's Island, and the islands of meadow on the west side of Staten Island, and all the waters and lands under water of this state around the same,

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situate to the southward and westward of the middle of the main channel of the bay and harbor of New York, as far as the bounds of this state extend.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 4.]

NOTE.—L. 1896, ch. 488, was a consolidation of certain municipalities in Kings, Richmond and Queens counties, in the mayor, aldermen and commonalty of New York; it did not affect the counties.

43. **Rockland.**—The county of Rockland shall contain all that part of this state, bounded southerly and southwesterly, by the line of the county of Westchester, where the same crosses Hudson's river, and the division line between this state and the state of New Jersey; easterly, by the middle of Hudson's river; and northerly and northwesterly, by a line drawn from the middle of the said river west to the mouth of Poplopen's kill, and running thence on a direct course to the east end of the mill dam formerly of Michael Weiman, across the Ramapough river; and then a direct course to the twenty mile stone standing in the said division line between this state and the state of New Jersey.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 9.]

44. **St. Lawrence.**—The county of St. Lawrence shall contain all that part of this state, bounded as follows: Northerly and northwesterly, by the bounds of the state; easterly, by the county of Franklin; south, by the north bounds of Totten and Crossfield's purchase; and southwesterly, by the division line between great lots number three and four of Macomb's purchase.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 28.]

NOTE.—See L. 1902, ch. 473, § 1, in note to Franklin county.

45. **Saratoga.**—The county of Saratoga shall contain all that part of this state, bounded northerly by the county of Warren; easterly, by the counties of Rensselaer, Washington and Warren; southerly by a line beginning at a point in the middle of Hudson's river opposite to the middle of the most northerly branch of the Mohawk river, and running thence southerly along the middle of said Hudson's river to a point opposite to the middle of the next southerly branch of the Mohawk river; thence through the middle of said last named branch of said Mohawk river to a point in the middle of the main body of the Mohawk river; thence through the middle of said Mohawk river westerly to the east bounds of the county of Schenectady; then along the easterly and northerly bounds of the said county of Schenectady, to the northwest corner of said county; then north one degree and twenty-five minutes west, along a line heretofore established, drawn from a point on the Mohawk river at the northeast corner of the tract granted to George Ingoldsby and others, to the southwest corner of the county of Warren.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 20, as amended by L. 1888, ch. 42.]

NOTE.—The following statute relates to and affects Saratoga county:

§ 1. Chapter forty-two of the laws of eighteen hundred and eighty-eight, entitled "An act to include Havre island at the mouth of the Mohawk river in the county of Saratoga," is hereby amended by adding thereto after § 1 the following sections, namely:

§ 2. The territory which is made a part of Saratoga county by this act is hereby annexed to and made a part of the town of Waterford in said Saratoga county.

[L. 1888, ch. 237, §§ 1, 2.]

46. **Schenectady.**—The county of Schenectady shall contain all that part of this state, bounded as follows: Beginning in the south bounds of the county of Saratoga, opposite a point on the Mohawk river, where it is nearest the north line of the manor of Rensselaerwyck, at Neskayuna, and running thence westerly, along the southerly bounds of the county of Saratoga, to the bounds of the Schenectady patent; then along the easterly and northerly bounds of said patent, to a line heretofore established, drawn north one degree and twenty-five minutes west, from a point on the Mohawk river, at the northeast corner of the tract granted to George Ingoldsby and others; then along the said line southerly, to the said northeast corner; then southerly along the north bounds of the last mentioned tract, and of the tracts granted to Walter Butler and Thomas Freeman, and to Alexander Philip and William Cosby, to the Schoharie Creek; then along the said creek to the old Schoharie patent, granted to Myndert Schuyler; then along the eastern bounds thereof, to the tract granted to Johannes Lawyer; then along the south and easterly bounds of the tract granted to Jonathan Brewer, to the north bounds of the manor of Rensselaerwyck; then easterly, along the north bounds of the said manor, to a point opposite the place of beginning; and then northerly to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 19.]

47. **Schoharie.**—The county of Schoharie shall contain all that part of this state,

bounded easterly by the counties of Albany and Schenectady; northerly, by part of the south bounds of the county of Montgomery; westerly, by a line beginning at the southwest corner of a tract of land formerly granted to John Lyne, and running thence south twenty-one degrees and forty-eight minutes west, two hundred and nineteen chains, to the place where Joshua Tucker formerly resided; then south seven degrees and forty-eight minutes west, one hundred and ninety-three chains, to the easternmost line of the second allotment of the Belvidere patent; then south nine degrees east, six hundred and ninety-five chains, to a hill called Grover's hill; then with a direct line to the most northwesterly corner of Stroughburgh patent; then with a direct line to the Charlotte or Adiquatangle branch of the Susquehanna river, where it is intersected by a continuation of the northeasterly bounds of Harpersfield; then southeasterly along the same, and along the northeasterly bounds of Harpersfield, to the Lake Utsayantho; and southerly, by a line formerly run from the head of Kaater's creek to the said lake Utsayantho, and by a part of the north bounds of the county of Greene.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 18.]

NOTE.—See note to Greene county, L. 1836, ch. 31, §§ 1-3.

48. Schuyler.—All those parts of the counties of Steuben, Chemung and Tompkins which, after this act goes into effect, will be embraced within the towns of Orange, Tyrone, Reading, Catharine including such part of Newfield as was provided to be attached to Catharine, by chapter three hundred and twenty-seven, laws of eighteen hundred and fifty-three, Dix, Cayuga and Hector, shall, from and after the passage of this act be for all purposes, except the election of members of the legislature and justices of the supreme court, and for the holding and jurisdiction of supreme and circuit courts and courts of oyer and terminer, until after the next state census or enumeration, and thereafter for all purposes whatever a separate and distinct county of the state of New York, and shall be known or distinguished by the name of Schuyler and the freeholders and other inhabitants of the said county of Schuyler, for all purposes (except as aforesaid), shall have and enjoy all and every the same rights, powers and privileges as the freeholders and inhabitants of any of the counties of this state are by law entitled to have and enjoy, and not subject to be assessed and taxed by any of the counties from which they are by this act taken.

[L. 1854, ch. 386, § 6.]

49. Seneca.—The county of Seneca shall contain all that part of this state, bounded on the north, by the county of Wayne; on the east, by the county of Cayuga; on the south, by the county of Tompkins; and on the west, by the west shore of the Seneca lake, and from the north end of said lake by the pre-emption line, as established by law.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 44.]

50. Steuben.—The county of Steuben shall contain all that part of this state, bounded as follows: Southerly, by the south bounds of the state; east, by the counties of Tioga and Tompkins; north, by the counties of Yates, Ontario and Livingston; and westerly, by the west line of the sixth range of townships in Phelps and Gorham's purchase.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 41.]

Excepting from the territory above described so much thereof as was erected into the county of Schuyler by L. 1854, ch. 386, § 6.

[L. 1854, ch. 386, § 6.]

NOTE.—The erection of the county of Chemung by L. 1836, ch. 77, which was set off from the westerly part of Tioga county, and the erection of the county of Schuyler, by L. 1854, ch. 386, which was set off from the counties of Steuben, Chemung and Tompkins, made the easterly boundary of Steuben county the counties of Yates, Schuyler and Chemung.

51. Suffolk.—The county of Suffolk shall contain all that part of this state, bounded easterly and southerly, by the Atlantic ocean; northerly, by the Long Island Sound; and westerly, by Lloyd's Neck, or Queen's village, Cold-Spring harbor, and the east bounds of the township of Oyster-Bay, and the same line continued due south to the Atlantic ocean; including the Isle of Wight, now called Gardiner's Island, Fisher's Island, Shelter Island, Plumb Island, Robin's Island, Ram Island, and the Gull Islands.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 1.]

NOTE.—See L. 1860, ch. 530; L. 1881, ch. 695; L. 1886, ch. 667, for boundary line between Queens and Suffolk counties, in note to Queens county.

52. Sullivan.—The county of Sullivan shall contain all that part of this state bounded as follows: Beginning in the westerly bounds of the state, opposite to the most southeasterly corner of lot number twenty-eight in the subdivision of

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great lot number two in the Hardenburgh patent, and running thence down the Delaware river along the division line between this state and the state of Pennsylvania, to a point opposite to where the river Mongaap falls into the Delaware river; then up and along the said river Mongaap, until an east course will strike the Shawangunk kill at the north bounds of the farm formerly occupied by Joseph Wood, junior; then east to the middle of the said Shawangunk kill; then down along the said middle to the mouth of the Plattekill; then up along the same to the southerly bounds of the patent of Rochester; then along the same, north forty-nine degrees thirty minutes west, twelve miles and a half; then north forty degrees east, to the division line between great lots number five and six, in the Hardenburgh patent; then along the said division line northwesterly to a line run by order of the surveyor-general, north sixty-two degrees east, from the place of beginning; then south sixty-two degrees west, along the said line, to the east bank of the Delaware river; and then in a straight line to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 12.]

53. **Tioga.**—The county of Tioga shall contain all that part of this state, bounded as follows: Beginning in the south bounds of this state, at the commencement of the pre-emption line, as established by law, and running thence north along the same, till it is intersected by a western continuation of the south bounds of the military tract; then along said continuation to the southwest corner of the military tract; then east along the south bounds of the military tract, to where the same is intersected by a line drawn north and south from the middle of the bridge that crosses Balding's mill creek, so called; then south along said line, until the same is intersected by a line drawn from the middle of the east bounds of the southeast section of township number seven, westerly and parallel with the south line of said township, and the same continued; then easterly along the said last mentioned line, to the west bounds of township number ten; then southerly along the same, to the north bounds of the second tier of lots in the southwest section of township number ten; then easterly along the same to the section line of number ten; then along the same northerly, to the southwest corner of the northeast section of township number ten; then easterly parallel with the south bounds of township number ten, to the west bounds of township number eleven; then southerly along the same, sixty chains; then easterly parallel with the south bounds of township number eleven, to the west bounds of section number six, on Owego creek; then southerly along the said west bounds, to the southwest corner thereof; and then easterly along the south bounds of the last mentioned section, to the Owego creek; then northerly up said creek, to the southwest corner of lot number five hundred and eighty-one, of the grand division of the Boston purchase; then easterly on the south line of the north tier of the short or square lots, so called, to the southeast corner of lot number five hundred and ninety-two, of said purchase, being the northwest corner of the county of Broome; then southerly along the west bounds of the county of Broome, to the south bounds of the state; and then westerly along the same to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 40.]

Excepting from the territory above described so much thereof as was erected into the county of Chemung by L. 1836, ch. 77.

[L. 1836, ch. 77.]

54. **Tompkins.**—The county of Tompkins shall contain all that part of this state, bounded as follows: On the north, by a line beginning at the northeast corner of lot number sixty, in the township of Locke, and running thence west along the line of lots to the northwest corner of lot number fifty-one in said township; then north along the west bounds of said township, to the northeast corner of lot number fifty, in the township of Milton; then west along the line of lots to the east bounds of lot number forty-one, in said township; then along the same north, to the northeast corner of said lot; then west along the north bounds thereof, and the same continued to the middle of the Cayuga lake; then southerly along said middle to a point opposite the southeast corner of the township of Ovid; then with a straight line to the said southeast corner; then westerly along the south bounds of said township; and the same continued to the west shore of the Seneca lake; westerly and southerly, by the west shore of said lake, and the county of Tioga; and easterly, by the counties of Tioga and Cortland.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 39.]

Excepting from the territory above described so much thereof as was erected into the county of Schuyler by L. 1854, ch. 386.

[L. 1854, ch. 386, § 6.]

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NOTE.—See L. 1853, ch. 327, § 1, for boundary line between counties of Chemung and Tompkins, in note to Chemung county.

55. Ulster.—The county of Ulster shall contain all that part of this state, bounded as follows: Beginning in the middle of Hudson's river, opposite to the north end of Wanton island, and running thence in a direct line to the said north end; then north forty-eight degrees west, four hundred and forty-five chains, to the west bounds of the patent granted to Johannes Hallenbeck; then along the same, south eight degrees west, seventy-one chains, to or near the end of a stone wall in the forks of the road between the houses now or heretofore of Hezekiah Wynkoop and Daniel Drummond; then north eighty-nine degrees west, eighty-seven chains, to stones near a chestnut tree cornered and marked, being the corner of lots number one and two, in the subdivision of great lot number twenty-six of the Hardenburgh patent; then along the division line between said lots, north fifty-nine degrees and thirty minutes west, seventy-eight chains, to a rock oak tree, being the corner of the land now or heretofore of Gilbert E. Palen and Jonathan Palen; then south twenty-four degrees west, four hundred and eleven chains, to the line run by Jacob Trumbour, in the year one thousand eight hundred and eleven, for the division line between the counties of Ulster and Greene; then along the said line until it intersects the northeasterly bounds of great lot number eight, in said patent; then along said bounds to the easterly bounds of the county of Delaware; then along the same southwesterly to the bounds of the county of Sullivan; then southeasterly along the same to the county of Orange; then easterly along the northerly bounds of the county of Orange, to the middle of Hudson's river; and then up along the same to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 11.]

56. Warren.—The county of Warren shall contain all that part of this state, bounded northerly, by a line running a due west course from the northwest corner of the county of Washington, so as to strike the most northerly point of the rock commonly called Rogers' rock, situate on the west side of Lake George, and continued due west until it intersects a line drawn from the Mohawk river, at the northeast corner of the tract granted to George Ingoldsby and others, north one degree and twenty-five minutes west; westerly, by the line last mentioned, until it intersects a line run due east to Fort George, near Lake George; and southerly, by the line last mentioned, until it strikes the north branch of Hudson's river, and by the middle of the said branch, and of the main stream of the said river, until it reaches the southeast corner of the patent of Queensbury, with such variations as may be necessary to include the whole of every island, any part whereof is nearer to the north or east shore of the said river, than to the south or west shore thereof; and to exclude the whole of every island, any part whereof is nearer to the said south or west shore than to the north or east shore aforesaid; and easterly, by the east bounds of said patent, and the same continued north to Lake George, and then along the east shore of said lake to the north bounds of the said county.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 24.]

57. Washington.—The county of Washington shall contain all that part of this state, bounded southerly, by the county of Rensselaer; easterly, by the east bounds of this state; northerly, by a due west line drawn from the east bounds of this state, so as to strike Lake George in a range with the most westerly point of the rock commonly called Rogers' rock, situate on the west side of Lake George; and westerly, by the county of Warren, and the middle of Hudson's river, from where it leaves the southeast corner of the county of Warren, until it meets the north bounds of the county of Rensselaer.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 23.]

58. Wayne.—The county of Wayne shall contain all that part of this state, bounded as follows: Beginning at the southeast corner of the township of Galen, and running thence north along the west bounds of the county of Cayuga to the north bounds of this state; then westerly along the said north bounds until intersected by a continuation of the west bounds of the third range of townships in Phelps and Gorham's purchase; then along such continuation and the said bounds south to the southwest corner of township number twelve of the third range; then east along the south bounds of said township to the southeast corner thereof; then north along the east bounds thereof to the southwest corner of township number twelve of the second range; then east along the south bounds thereof to the northeast corner of township number eleven of the second range; then along the east bounds thereof south, until intersected by a continuation of

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the south bounds of the township of Galen; then east along said continuation and bounds to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 47.]

59. **Westchester.**—The county of Westchester shall contain all that part of this state, bounded southerly, by Long Island Sound; easterly, by the east bounds of the state; northerly, by the north bounds of the manor of Cortlandt, and the same line continued east to the bounds of the state, and west to the middle of Hudson's river; and westerly, by a line running from thence down the middle of Hudson's river, until it comes opposite to the bounds of the state of New Jersey, on said river; then west to the same; then southerly along the west bounds of this state, to the line of the county of New York; and then along the same easterly and southerly to the Sound, or East river, including Captain's Island, and all the islands in the Sound to the east of Frog's Neck, and the northward of the main channel.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 6.]

NOTE.—See L. 1873, ch. 613, § 1, as amended and re-enacted by L. 1874, ch. 329, § 1, pt.; L. 1895, ch. 934, § 1, affecting boundary line between New York and Westchester counties, in note to New York county.

60. **Wyoming.**—All that part of the county of Genesee lying and being on the south side of a line beginning at the northwest corner of the town of Bennington, in the county aforesaid, and running thence east on the north line of the towns of Bennington, Attica and Middlebury, to the west line of the town of Covington; thence south on the east line of Middlebury to the southwest corner of the Craigie tract; thence east on the south line of said Craigie tract, and on the south bounds of the forty thousand acre tract to the east line of the said town of Covington, shall be a separate and distinct county of the state of New York, and be known by the name of Wyoming, and entitled to and possessed of all the benefits, rights, privileges and immunities, and subject to the same duties as the other counties of this state, and the freeholders and inhabitants thereof shall possess and enjoy all the rights and immunities which the freeholders and inhabitants of the several counties of this state are by law entitled to possess and enjoy. All the remaining part of the present county of Genesee shall be and remain a separate and distinct county by the name of Genesee.

[L. 1841, ch. 196, § 1.]

NOTE.—The following statute relates to and affects the county of Wyoming:

§ 1. The towns of Eagle, Pike, and all that part of the town of Portage, in the county of Allegany, lying on the west side of the Genesee river, bounded as follows: On the east by the Genesee river; on the south by a line running due easterly from the south line of the town of Pike, until it intersects the Genesee river; and west and north by the original lines of said town, from and after the passage of this act, shall be and the same are hereby annexed to the county of Wyoming.

[L. 1846, ch. 51, § 1.]

61. **Yates.**—The county of Yates shall contain all that part of this state, bounded as follows: Beginning on the west margin of the Seneca lake, at the termination of an east and west line between lots number seven and eight, of the tract lying between the new pre-emption line and the Seneca lake, and running thence west along said line to the new pre-emption line; then along the same north to the northeast corner of lot number fifteen of the tract between the old and new pre-emption lines; then west along the north bounds of lot number fifteen to the old pre-emption line; then northerly along the same to the northeast corner of township number five, in the first range of townships in Phelps and Gorham's purchase; then west along the north bounds of said township to the southeast corner of township number six of the second range; then along the east bounds thereof north, to the Crooked lake; then northwest to the middle of the east arm of said lake, then southwesterly and northerly through the middle thereof and of the west arm of said lake to the north bounds of township number six of the second range; then west along the same and the north bounds of township number six of the third range to the southeast corner of township number seven of the fourth range; then north along the east bounds of said township to the southwest corner of township number eight of the third range; thence east along the south bounds of said township to the middle of the Canandaigua lake; then northerly along said middle to the north bounds of said township; then east along the same and the north bounds of township number eight in the second and first ranges and the same continued to the Seneca lake; then along the west margin thereof to the place of beginning.

[R. S., pt. 1, ch. 2, tit. 1, § 2, ¶ 46.]

Lines to be taken as the magnetic needle pointed at the time of their estab-

ishment.—All lines which, in the foregoing bounds, are described by courses indicated by the magnetic needle, are respectively to be taken as the magnetic needle pointed at the several times when such lines were originally established.

[R. S., pt. 1, ch. 2, tit. 1, § 3.]

Rights of persons not to be affected by the description of boundaries.—None of the bounds or lines assigned for the limits of any of the said counties, shall be construed to affect the right or title of any person or body politic, or to confirm the bounds or right of any patent whatsoever.

[R. S., pt. 1, ch. 2, tit. 1, § 4.]

Division line between counties separated by a river or creek.—Whenever two counties are separated from each other by a river or creek, the middle of the channel of such river or creek shall be the division line between them, unless herein before otherwise provided.

[R. S., pt. 1, ch. 2, tit. 1, § 5.]

Islands crossed by boundary lines.—Whenever the boundary line between two counties crosses an island, the whole of such island shall be deemed to be within the county in which the greater part of it lies, unless otherwise directed.

[R. S., pt. 1, ch. 2, tit. 1, § 6.]

Concurrent jurisdiction in Kings, Richmond and New York counties, over certain waters.—The counties of Kings, Richmond and New York, shall, for the purpose of serving all process, civil or criminal, have concurrent jurisdiction on the waters in the counties of Kings and Richmond, lying south of the bounds of the county of New York.

[R. S., pt. 1, ch. 2, tit. 1, § 7.]

By officers of what counties process may be served on Seneca lake.—All process issuing to officers of either of the counties bordering on the Seneca lake, may be served upon the waters of the said lake by any officer or person charged with the service thereof; and the said counties shall, for all the purposes of civil and criminal process, have concurrent jurisdiction on the said waters.

[R. S., pt. 1, ch. 2, tit. 1, § 8.]

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

Where a statute has been specifically repealed that and the repealing statute are given without an explanatory note.

R. S., pt. 1, ch. 2, tit. 3.—Relates to congressional districts. Was superseded by L. 1832, ch. 334.

L. 1778, ch. 12 § 2, 6 pt.—Relates to arms, great and privy seal of the state. So far as arms and great seal are concerned, the State Law, art. 3 (art. 6, Consolidated Law), provides for same, and supersedes act affected. Provision for privy seal is made in Public Officers Law.

L. 1779, ch. 24, 3d session.—Portions not repealed by L. 1874, ch. 4, § 4, are superseded by R. S., pt. 1, ch. 1, tit. 1, § 1.

L. 1780, ch. 32.—Authorizing production of original papers in office of secretary of state on hearing in Congress respecting lands in eastern part of the state. Temporary and obsolete.

L. 1780, ch. 38.—Relates to western boundaries of the state, and cession of lands west thereof to the United States. The boundaries of the state being defined in and superseded by R. S., pt. 1, ch. 1, tit. 1. The act affected is obsolete.

L. 1783, ch. 28.—Relates to commissioners to complete running the jurisdiction line between this state and Massachusetts. Temporary and obsolete.

L. 1784, ch. 2.—Relates to commissioners to complete the running of jurisdiction line between this state and Massachusetts. Temporary and obsolete.

L. 1784, ch. 4.—Relates to appointment of commissioners in a dispute between Massachusetts and this state. Temporary and obsolete.

L. 1785, ch. 20.—Provides for completing running line between this state and Pennsylvania. Temporary and obsolete.

L. 1786, ch. 49.—Relates to appointment of agents in controversy with Massachusetts. Temporary and obsolete.

L. 1787, ch. 46.—Relates to jurisdiction line between this state and Massachusetts. Obsolete.

L. 1787, ch. 79.—Relates to jurisdiction line between this state and Massachusetts. Obsolete.

L. 1787, ch. 103, § 1.—Relates to jurisdiction line between this state and Pennsylvania. Obsolete.

L. 1790, ch. 18.—Concerning the appointment of commissioners concerning the formation and erection of territory in this state into another state. Obsolete.

L. 1791, ch. 4, §§ 4-6.—Apportionment of the representation in the legislature.

L. 1911, ch. 890.

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L. 1801, ch. 193, repeals all acts coming within the purview of the Revised Acts, Statute cited comes within the purview of 1 R. A., ch. 125, p. 421.

L. 1792, ch. 4.—Cession to United States. Embodied in State Law, § 22, subd. 1.

L. 1795, ch. 33.—Concerns eastern boundary between this state and Massachusetts. Temporary and obsolete.

L. 1796, ch. 19.—Apportionment of members of the legislature. Superseded by L. 1801, ch. 125.

L. 1796, ch. 47.—Concerns eastern boundary line between this state and Massachusetts. Obsolete.

L. 1797, ch. 33, § 9.—Provisions as to number of assemblymen in Ulster, Otsego and Delaware counties, superseded by 1 R. A., ch. 125 (1 K. & R., p. 421), and repealed by L. 1801, ch. 193.

L. 1798, ch. 6.—Concerning the great seal of this state. Temporary and obsolete.

L. 1798, ch. 112.—Cession to United States. Lands on Eaton's Neck. Found in 1 R. L. (1 V. & W., p. 189), and revised therefrom and from documents in secretary of state's office, in 1 R. S., pt. 1, ch. 1, tit. 3, § 2. Consolidated in proposed State Law, § 22, subd. 2.

L. 1800, ch. 6.—Cession to United States of Bedlow's, Oyster and Governor's islands. Found in 1 R. L. (1 V. & W., p. 189), and revised therefrom and from documents in the secretary of state's office in 1 R. S., pt. 1, ch. 1, tit. 3, § 3. Consolidated in State Law, § 22, subd. 3.

L. 1800, ch. 15.—Concerning commissioners to settle controversy between this state and Connecticut. Temporary.

L. 1800, ch. 76.—Cession to United States of lands on Staten Island. Embodied in State Law, art. 2, § 26, subd. 2; § 23, subd. 2, art. 3, this law, same section.

L. 1801, ch. 27, § 5.—Relates to the great and privy seal of the state. Superseded by 1 R. L., ch. 14, § 6, p. 459, and repealed by L. 1813, ch. 202.

L. 1801, ch. 125.—Apportioning the representation in the legislature. Superseded by 2 R. L., ch. 68, p. 241, and repealed by L. 1813, ch. 202.

L. 1801, ch. 159.—Provides for a constitutional convention and election of delegates thereto. Temporary and obsolete.

L. 1802, ch. 47, § 2.—Cession to United States of land at Black Rock. Embodied in State Law, art. 2, § 23, subd. 3; art. 3, this law, same section.

L. 1803, ch. 23.—Apportioning senators to the Eastern and Western districts of the state. Superseded by 2 R. L., ch. 68, p. 241, and repealed by L. 1813, ch. 202.

L. 1803, ch. 54.—Cession to United States of Great Gull and Little Gull islands. Superseded by 1 R. S., pt. 1, ch. 1, tit. 3, § 4, and consolidated in State Law, art. 3, § 22, subd. 4.

L. 1803, ch. 106, § 13.—Concerning cession of lands near Fort Niagara to United States. Temporary and obsolete.

L. 1804, ch. 31, § 6.—Apportionment of representation in assembly for Seneca and Cayuga counties. Superseded by 2 R. L., ch. 68, p. 241, and repealed by L. 1813, ch. 202.

L. 1806, ch. 6.—Cessions to United States. Embodied in State Law, § 22, subd. 5, (lands on Watch Point); § 28, subd. 4 (Staten Island).

L. 1807, ch. 51.—Proviso to § 1, repealed by L. 1808, ch. 51, § 2. Balance embodied in State Law. Staten Island, § 22, subd. 2; Long Island, § 29, subd. 3; Bluff Point, § 23, subd. 1.

L. 1807, ch. 113.—Concerning eastern boundary of New Jersey; appointment of boundary commissions. Temporary and obsolete.

L. 1808, ch. 51.—Section 1, extends powers of commissioners to cede lands between Long Island and Staten Island. Revised in 1 R. S., pt. 1, ch. 1, tit. 3, § 8. Embodied in State Law, § 31, subd. 3. Sections 3-6, concerning grants to United States. Embodied in State Law, § 31, subd. 3. Temporary and obsolete.

L. 1808, ch. 90.—Concerning election of senators. Temporary and obsolete.

L. 1808, ch. 93.—Relates to site for light-house in town of North Hempstead, Sands or Watch Point. Embodied in State Law, § 22, subd. 5.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1809, ch. 141, § 2.—Relative to the great seal of the state. Superseded by 1 R. L., ch. 14, p. 458, § 6, and repealed by L. 1813, ch. 202.

L. 1811, ch. 93.—Authorizing cession to United States of lands on State Island for a military academy. Obsolete.

L. 1811, ch. 138.—Relates to land in Buffalo for light-house purposes and cession thereof. Revised in 1 R. L. (1 V. & W., p. 196), and in R. S., pt. 1, tit. 3, § 9. Now contained in State Law, § 22, subd. 11.

L. 1812, ch. 90.—Relates to designation of boundary line between Vermont and this state. Is now embodied in State Law, § 4.

L. 1812, ch. 120.—Division of the state into congressional districts. Superseded by 2 R. L., ch. 46, p. 241, § 1, and repealed by L. 1813, ch. 202.

L. 1812, ch. 139, §§ 16, 17.—Relates to cession to United States. Revised in R. S., pt. 1, ch. 1, tit. 3, § 10. Embodied in State Law, § 33.

2 R. L., ch. 68, p. 241.—Apportioning representation in legislature. Superseded by R. S., pt. 1, ch. 7, tit. 1, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

1 R. L., ch. 74, § 8, p. 292.—Relates to Massachusetts boundary. Now defined in State Law, § 3.

L. 1814, ch. 13.—Pursuant to provisions of this act the city of New York exchanged with the United States certain property at New Utrecht, Kings county, for certain other property described in a deed in secretary of state's office, dated December 20, 1814. Pursuant to L. 1824, ch. 334, as amended by L. 1826, ch. 248, said property at New Utrecht was formally ceded to United States.

L. 1814, ch. 15, § 3.—Relates to cession to United States. Embodied in State Law, § 26, subd. 2.

L. 1815, ch. 121.—Empowers certain state officers, as commissioners, to declare the assent of the legislature to the acquiring of lands by the United States for the safety and defense of the western and northern boundaries of the state, also extends the powers of said commissioners to lands in Westchester county for the purposes of defense of city and port of New York. This statute appears to have been an emergency measure. Two of the state officers named in the statute as commissioners, the chancellor and the chief justice of the supreme court, are no longer in existence. The statute is recommended for repeal.

L. 1815, ch. 142.—Apportionment of members of assembly. Superseded by R. S., pt. 1, ch. 7, tit. 1, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1815, ch. 160.—As to election of senators in middle and western districts. Temporary and obsolete.

L. 1815, ch. 208.—Relates to the four great senatorial districts. Superseded by R. S., pt. 1, ch. 2, tit. 2, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1816, ch. 16, 40th session.—Concerns cessions to United States. Now embraced in State Law, § 34.

L. 1818, ch. 126.—Relates to 14th congressional district. Superseded by L. 1822, ch. 250, § 16.

L. 1818, ch. 228, §§ 1, 2, 3.—Sections 1, 2, cession of Galloo island to United States. Section 3 cession of Island Point, near Rouse Point, Lake Champlain. Superseded by R. S., pt. 1, ch. 1, tit. 3, §§ 14, 15, and now in State Law, § 22, subds. 6, 7.

L. 1821, ch. 3.—Cession to United States of lands on east side of the Genesee river at its intersection with Lake Ontario. Abrogated by L. 1822, ch. 4, which cedes to the United States lands on the west side of the Genesee river in lieu of the lands ceded by L. 1821, ch. 8.

L. 1821, ch. 84.—Divides 14th congressional district. Superseded by L. 1822, ch. 250, § 16.

L. 1821, ch. 90.—Relates to constitutional convention. Obsolete.

L. 1821, ch. 164.—Cession to United States of lands at the mouth of Oswego river. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 16, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1822, ch. 4.—Cession to the United States of lands on west side of Genesee river. [See note 67.] Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 17, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1822, ch. 207.—Apportioning members of assembly. Superseded by L. 1826, ch. 289.

L. 1823, ch. 179.—Cession to the United States of land at Oldfield point, Long Island sound, Suffolk county, and of land at Throgs Neck, Westchester county. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 20, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1824, ch. 268.—Cession to United States of lands in town of Sodus, Wayne county, for a lighthouse. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 18, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1824, ch. 334.—Cession to United States of lands at New Utrecht, Kings county. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 21, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1825, ch. 224.—Cession to United States of lands near Fire Island inlet, town of Islip, Suffolk county, for lighthouse. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 22, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1826, ch. 64.—Cession to United States of lands at West Point, town of Corn-

L. 1911, ch. 890.

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wall, Orange county. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 25, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1826, ch. 84.—Cession to United States of lands in town of Haverstraw, Rockland county, called Stony Point. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 23, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1826, ch. 248.—Cession to United States of lands in town of New Utrecht, Kings Co. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 21, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1826, ch. 278.—Relates to amendments to Constitution. Obsolete.

L. 1827, ch. 2.—Provides for purchase of a map and atlas of the state, made by David H. Burr, and the publication of the same. Temporary.

L. 1827, ch. 23.—Cession to United States of lands at Tibbet's point, town of Lyme, Jefferson county. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 26, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1827, ch. 229.—Cession to United States of lands on west end of Plumb island, Suffolk county. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 27, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1827, ch. 299.—Relates to jurisdiction and territorial limits of this state and New Jersey. Temporary. Fixed by State Law, art. 1, § 7; art. 2, § 7, consolidated law.

L. 1827, ch. 324.—Cession to United States of land in town of Westfield, Richmond county. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 28, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1826, ch. 20, § 18, ¶ 3.—Relates to congressional districts, was made a part of R. S., pt. 1, ch. 2, tit. 3, § 1, ¶ 20, and as such was superseded by L. 1832, ch. 334.

L. 1826, ch. 211.—Cession to United States of land near southwestern point of Staten Island. Superseded by revision in R. S., pt. 1, ch. 1, tit. 3, § 29, and repealed by L. 1828, ch. 21, § 1, ¶ 549, 2d meeting.

L. 1833, ch. 334, 2d meeting.—Relates to division of state into congressional districts. Superseded by L. 1842, ch. 325.

L. 1833, ch. 6.—Appoints a commission to negotiate concerning territorial limits and jurisdiction between New York and New Jersey. Temporary.

L. 1833, ch. 259.—Relates to amendment to Constitution. Obsolete.

L. 1835, ch. 147.—Relates to amendments to Constitution. Obsolete.

L. 1836, ch. 436, §§ 1-3.—Relates to apportionment of assemblymen and fixes senate districts. Superseded by L. 1846, chs. 44, 328.

L. 1842, ch. 325, §§ 1, 2.—Superseded by L. 1851, ch. 499. Relates to congressional districts.

L. 1845, ch. 140.—Relates to census. Superseded by L. 1855, ch. 64.

L. 1845, ch. 252.—Relates to constitutional convention. Obsolete.

L. 1846, ch. 44.—Relates to apportionment of assemblymen. Superseded by L. 1857, ch. 337.

L. 1846, ch. 94.—Relates to constitutional convention. Obsolete.

L. 1846, ch. 328.—Relates to senate districts. Superseded by L. 1857, ch. 339.

L. 1851, ch. 499.—Relates to congressional districts. Superseded by L. 1862, ch. 454.

L. 1854, ch. 5.—Relates to amendments to Constitution. Obsolete.

The following statutes have been amended so as to read as follows, and are superseded and repealed by the amending statutes: L. 1835, ch. 40, § 1; L. 1855, ch. 181, § 3; L. 1892, ch. 398, All; L. 1901, ch. 591, subd. 9. When the foregoing statutes have been repealed by being amended "to read as follows," except the section "This act shall take effect immediately," this section is included in the word "All" under the heading "statutes hereby repealed."

L. 1857, ch. 337.—Relates to apportionment of assemblymen. Superseded by L. 1866, ch. 607.

L. 1857, ch. 339.—Relates to senate districts. Superseded by L. 1886, ch. 805.

L. 1858, ch. 320.—Relates to constitutional convention. Obsolete.

L. 1860, ch. 159.—Concerns powers of the commissioners for the survey and settlement of boundary lines between New York and Connecticut. Temporary.

L. 1862, ch. 454.—Relates to congressional districts. Superseded by L. 1873, ch. 798.

L. 1864, ch. 9.—Concerns amending Constitution. Obsolete.

L. 1865, ch. 13.—Concerns amending Constitution. Obsolete.

L. 1865, ch. 34.—Relates to census. Obsolete.

L. 1866, ch. 181.—Relates to constitutional convention. Obsolete.

- L. 1866, ch. 607.—Relates to apportionment of assemblymen. Superseded by L. 1879, ch. 208.
- L. 1868, ch. 805.—Relates to senate districts. Superseded by L. 1879, ch. 208.
- L. 1867, ch. 194.—Relates to convention to revise Constitution. Obsolete.
- L. 1867, ch. 458.—Provides for manual for constitutional convention. Obsolete.
- L. 1867, ch. 463.—Relates to convention to revise Constitution. Obsolete.
- L. 1868, ch. 538.—Relates to constitutional convention. Obsolete.
- L. 1869, ch. 318.—Relates to amendments to Constitution. Obsolete.
- L. 1870, ch. 357.—Authorizes sale to the United States of a parcel of land in the city of Albany. Section 5 has been repealed, as appears in the schedule. The sale has been consummated and the act is obsolete.
- L. 1872, ch. 619.—Divides state into congressional districts. Superseded by L. 1873, ch. 798.
- L. 1872, ch. 884.—Concerns constitutional amendments. Obsolete.
- L. 1873, ch. 6.—Concerns a commission to propose amendments to Constitution. Obsolete.
- L. 1873, ch. 798.—Relates to congressional districts. Superseded by L. 1883, ch. 424.
- L. 1874, ch. 330.—Relates to constitutional amendments. Temporary.
- L. 1875, ch. 143.—Relates to census. Temporary and obsolete.
- L. 1876, ch. 147, § 1.—Cession to United States. Embodied in State Law, § 23, subd. 13.
- L. 1876, ch. 345.—Concerning amendments to Constitution. Obsolete.
- L. 1879, ch. 345, § 1.—Amends title of act concerning cession to United States of right of way for improvement of Harlem river and Spuyten Duyvil creek. Superseded by State Law, art. 3, § 23, subd. 13.
- L. 1880, ch. 491.—Relates to constitutional amendments. Obsolete.
- L. 1882, ch. 229.—Relates to constitutional amendments. Obsolete.
- L. 1882, ch. 343.—Relates to constitutional amendments. Obsolete.
- L. 1884, ch. 533.—Relates to constitutional convention. Obsolete.
- L. 1888, ch. 296.—Relates to constitutional amendments. Obsolete.
- L. 1892, ch. 5.—Relates to census. Superseded by L. 1905, ch. 83.
- L. 1892, ch. 295.—Congressional districts. Superseded by L. 1901, ch. 591.
- L. 1892, ch. 397.—Relates to senate and assembly districts. Superseded by Constitution 1904, art. 3.
- L. 1892, ch. 678.—This statute, which is the "old" State Law, is recommended for repeal because its live provisions have been incorporated in State Law.
- L. 1893, ch. 8.—Relates to constitutional convention. Temporary.
- L. 1901, ch. 591.—Division of state into congressional districts. Subdivision specifying the boundaries of the ninth district was amended "to read as follows" by L. 1902, ch. 298, § 1. The whole act as amended is consolidated in State Law, § 110.
- L. 1902, ch. 298.—Consolidated in State Law, § 110, ninth subdivision.
- L. 1905, ch. 83.—Enumeration of the inhabitants of the state. Consolidated in State Law, art. 9, except §§ 3, 10, which were amended "so as to read as follows" by L. 1905, ch. 144, and §§ 20-22, which are of temporary importance.
- L. 1905, ch. 144.—Amending L. 1905, ch. 83, §§ 3, 10. Consolidated in State Law, § 142.
- L. 1905, ch. 380.—Entry upon lands for purpose of United States survey. Consolidated in State Law, art. 5.
- L. 1906, ch. 431.—Senate districts and apportionment of members of assembly. Superseded by L. 1907, ch. 727.
- L. 1907, ch. 339.—Consolidated in State Law, § 4.
- L. 1907, ch. 727.—Consolidated in State Law, art. 8.

Acts Supplemental to State Law.

- L. 1905, ch. 240.—"An act to authorize and empower the commissioners of the land office to convey to the United States of America certain lands in what was formerly known as the town of Southfield, in the county of Richmond, known as lot number eleven, map or page eleven, tax maps of the town of Southfield, said lot being a part of the Fort Wadsworth military reservation and having been sold by the treasurer of Richmond county to the state of New York for taxes in eighteen hundred and ninety-six."
- L. 1909, ch. 190.—"An act to cede to the United States jurisdiction of a certain tract

Cross-references.

or parcel of land in Jefferson county, acquired by the United States for the purpose of a target range, and exempting such property from taxation so long as the same shall remain the property of the United States."

- L. 1909, ch. 230.—"An act granting the consent of the state of New York to the acquisition by the United States of certain land for the purpose of the erection of a lighthouse and necessary buildings, situate, lying and being in the borough of Richmond, formerly town of Northfield, city of New York, state of New York, and ceding jurisdiction over the same."
- L. 1913, ch. 188.—An act authorizing the acquisition by the United States of lands in the borough of Queens, city of New York, as a site for a life saving station.
- L. 1913, ch. 468.—An act granting the consent of the State of New York to the occupation by the United States of certain lands for the purpose of the erection of a lighthouse and necessary buildings, situate near the city of Kingston in the county of Ulster, and ceding jurisdiction over the same.

STATE MUSEUM.

See Education Law, §§ 53-56.

STATE PAPER.

Abolished; Executive Law, § 83. Publication of notice, etc., heretofore required in; Executive Law, § 83.

STATE PARKS.

See Parks.

Conservation Law.

STATE POLICE.

Established; Executive Law, §§ 92-97.

STATE PRINTING LAW.

L. 1917, ch. 667.—"An act relating to state printing, constituting chapter fifty-eight of the Consolidated Laws."

(In effect May 28, 1917.)

CHAPTER 58 OF THE CONSOLIDATED LAWS.**STATE PRINTING LAW.**

- Article 1. Short title (§ 1).
 2. General provisions (§§ 2-12).
 3. Laws repealed; when to take effect (§§ 20, 21).

ARTICLE I.**SHORT TITLE.****Section 1. Short title.**

§ 1. Short title.—This chapter shall be known as the "state printing law."

Source of chapter.—L. 1917, ch. 667 is a revision of L. 1909, ch. 60, as amended by L. 1909, ch. 413, L. 1910, ch. 392, and L. 1915, ch. 193.

ARTICLE II.**GENERAL PROVISIONS.**

- Section 2. State printing board.
 3. Classification.
 4. Powers and duties of printing board.
 5. Legislative printing.
 6. Proposals for legislative printing.
 7. Department printing.
 8. Proposals for department printing.
 9. Session laws.
 10. Audit of accounts by comptroller.
 11. Right to annul contracts.
 12. Complaints against contractor.

§ 2. State printing board.—There shall be, and there is hereby, established the state printing board, which shall be composed of three members, to wit: of the comptroller, attorney-general and secretary of state. The said printing board shall meet and organize within thirty days after this chapter takes effect. The secretary of state shall be the president of the board and the comptroller shall be its secretary. The office of the

board shall be located in the office of the comptroller, and he shall appoint an expert printer, and such assistants and employees as shall be authorized by appropriations made by the legislature therefor, and such employees shall receive such salaries as shall be fixed by the legislature in such appropriations. The minutes of each meeting of the board shall be recorded in a minute book to be kept by the secretary of the board, and shall be printed in full after the adjournment of said meeting. The printing board shall have supervision over all contracts for public printing provided to be made herein, and may establish standard sizes and grades of paper.

§ 3. **Classification.**—The public printing is hereby classified into three principal parts. The first part shall be known as the legislative printing, which shall include all printing done for or upon the order of the legislature. The second part shall be known as the department printing, which shall include all printing for the various offices, institutions and departments of the state. The third part shall be known as the printing of the session laws, which shall include the printing of all slips of the laws, the publication of the official and public editions of the session laws and the binding thereof.

§ 4. **Powers and duties of printing board.**—It shall be the duty of said printing board, after public notice, and in accordance with rules and regulations to be prescribed by it, to let to the lowest bidder, as hereinafter provided, who shall give adequate security for the performance of the contract, all contracts for the work embraced in the three several parts in this chapter defined, except printing done pursuant to law in the prisons of the state, in the state charitable and benevolent institutions for the benefit of such institutions, the printing of examination question papers in the rooms of the university of the state of New York by its employees, the printing authorized by the election law, the stationery used by the legislature and the bulletins issued by the Geneva and Ithaca experimental stations.

The said board shall adopt and promulgate appropriate rules and regulations touching the manner of the performance of its work and prescribing the form and manner of advertisement for bids and all requisitions made upon it for printing, except that said board shall make no rule or regulation inconsistent with or in violation of the provisions of this chapter.

The printing board shall appoint two inspectors, who shall investigate and report to the said board on the qualifications and facilities of any person, firm or corporation proposing to perform any printing contract for which provision is made in this chapter. No contract shall be awarded to any bidder until the printing board shall have been satisfied, by such investigation, that the facilities and equipment of such bidder are ample and sufficient to insure the proper performance of said contract.

The quality and style of printing, paper and publication shall be the same in the legislative printing as in the year nineteen hundred and sixteen, and no change shall be made therein except with the consent of the printing board.

Rebinding old books.—There being no provision in former law for rebinding old books the state department may have such work performed outside the state printing plant. Rept. of Atty. Genl. (1910) 820.

§ 5. **Legislative printing.**—The legislative printing, constituting the first part hereinbefore described, shall include the bills, documents, calendars, journals, substitutes for engrossed bills and memorials of both houses of the legislature, together with the necessary binding thereof.

There shall be printed, by the contractor, fifteen hundred copies of each bill and delivered within twenty-four hours after the receipt of the copy as follows: To the superintendent of documents of the senate, three hundred and seventy copies; to the superintendent of documents of the assembly, ten hundred and fifty copies; to the state library, two copies; to the state officers, fifty copies; and the remaining copies, gathered and collected in the order of their numbers with the indexes thereto, properly compiled and bound, shall be delivered by him as soon as possible after the close of the session as directed by the clerks of the senate and assembly; and there shall be printed at the same time by such contractor, in addition to the fifteen hundred copies of each bill heretofore provided for in this section, five hundred copies of any or all general senate bills, as designated by the clerk of the senate, and delivered to the superintendent of documents of the senate; also five hundred copies of any or all general assembly bills, as designated by the clerk of the assembly, and delivered to the superintendent of documents of the assembly; also five copies of such substitutes for engrossed bills as shall be ordered by the clerks of the senate and assembly.

There shall be printed by the contractor, as promptly as possible after the receipt of the copy thereof, eight hundred and fifty copies of the journals, calendars, messages from the governor, reports of standing or select committees, which shall not include testimony taken by such committee, when printed for the use of the committee by order of either house, reports and communications made in pursuance of law, when ordered by the house to which such message, report or communication shall be made, and reports of state officers, departments, commissions, institutions and boards. When printed, the same shall be delivered, folded, stitched and trimmed, as follows: To the superintendent of documents of the senate, one hundred and eighty copies; to the superintendent of documents of the assembly, two hundred and ninety copies; to the state officers, fifty copies; and the remaining copies, gathered and collected in the order of their numbers, and in volumes of not less than one thousand pages, with the indexes thereto, properly compiled and bound, shall be delivered as soon

as possible after the close of each session as directed by the clerks of the senate and assembly.

Any state officer, department, commission, institution or board required by law to report to the legislature, and whose report shall be printed as a legislative document under the provisions of this chapter, may deliver the copy of such report to the printing board on or before the first day of August, or as soon thereafter as possible, and when so delivered the same shall be ordered printed for transmission to the legislature in printed form.

If it shall be found that the report of any appointive state officer, department, commission, institution or board transmitted to the legislature or delivered to the printing board as herein provided cannot be printed within the appropriation made by the legislature therefor, such report shall be returned by the printing board to such state officer, department, commission, institution or board with a statement as to the quantity of matter which it will be necessary to exclude in order that such report may be printed within the appropriation made by the legislature.

In addition to the eight hundred and fifty copies of reports of state officers, departments, commissions, institutions and boards printed for the use of the legislature, there shall be printed as extra copies for the use of the respective state officers, departments, commissions, institutions and boards, subject to the power of the printing board to eliminate from said extra printed copies immaterial and duplicated matter of which it shall be the sole judge: of the governor's message, two thousand copies; of the comptroller's report of the finances of the state, fifteen hundred copies; of the canals, two hundred and fifty copies; of the state treasurer's report, seven hundred copies; of the attorney-general's report, twelve hundred and fifty copies of the second volume containing the opinions; seven hundred copies of the first volume containing the attorney-general's report; of the engineer and surveyor's report, one thousand copies; of the report of the superintendent of insurance, three thousand copies; of the report of the adjutant-general, one thousand copies; of the report of the superintendent of public works, one thousand copies; of the report of the superintendent of prisons, one thousand copies; of the report of the board of charities, one thousand five hundred copies; of the report of the department of health, two thousand copies; of the report of the industrial commission, three thousand five hundred copies; of the report of the commissioner of excise, one thousand five hundred copies; of the report of the civil service commission, one thousand copies; of the report of the department of agriculture, three thousand copies; of the volumes containing the reports of the Geneva and Ithaca experiment stations, two thousand additional copies; of the report of the hospital commission two thousand copies; of the report of the tax commission, three thousand copies; of the library report, one thousand copies; of the museum and natural history report, one thousand copies; of the annual reports of the

public service commissions, three thousand copies; of the report of the commissioner of education, fifteen thousand copies; of the geologist's report, one thousand five hundred copies; of the report of the historian, two thousand copies; of the report of the conservation commission, two thousand copies; of the report of the Grand Army of the Republic, one thousand copies; of the report of the United Spanish War Veterans, one thousand copies; of the report of the superintendent of banks, one thousand copies; of the report of the fiscal supervisor of charities, one thousand copies; of the report of the highway commission, two thousand copies; of the report of the probation commission, one thousand copies; of the report of the prison commission, one thousand five hundred copies; of the report of the court of claims, one thousand copies; of the report of the American Scenic and Historic Preservation Society, one thousand five hundred copies; and for all other institutions, boards and commissions reporting to the legislature and not referred to herein, five hundred copies each.

Upon request duly made therefor, not to exceed fifty copies of said extra copies shall be delivered to the state library, by the state officer, department, commission, institution and board receiving the same.

Such extra copies shall not be printed if the cost thereof as determined by said printing board is in excess of the appropriation made therefor by the legislature in providing for the support and maintenance of the departments, commissions, institutions and boards making the said reports, but said printing board may authorize the printing of a less number so as to keep the cost thereof within the appropriation made therefor.

The cost of printing such extra copies shall be paid to the legislative printer out of and from said appropriation.

No report of any institution, board or commission shall be printed as hereinbefore provided for where the same is or can be printed by or in the institution making the same.

Whenever any department shall, under the provisions of law, issue a portion of its annual report in advance in the form of bulletins, such bulletins shall be printed by the contractor for the legislative printing at the rates provided for in his contract.

In the case of any printing authorized by this section, or of any printing hereafter authorized by resolution of either branch of the legislature or by a concurrent resolution thereof, no extra charge shall be made except for extra paper or work beyond that required by the terms of the contract actually furnished with the approval of the comptroller, and for such extra paper and work the charge allowed shall not exceed the current market rates. Composition shall not be charged a second time on matter printed from type already set or plates made at state expense, but the comptroller may make suitable allowance for handling of plates and reimposing type forms. In all cases where illustrations are used, the engravings and plates shall forthwith become the property of the state,

and thereafter no charge shall be made for their subsequent use, except that the comptroller may make a suitable allowance for the handling of the plates.

All of the extra copies of the reports mentioned in this section, except as otherwise provided, shall be bound in paper covers, unless a report shall embrace more than three hundred pages, in which case the whole number of extra copies shall be bound in cloth.

Whenever any officer, bureau, board, commission, or any corporation or association shall make to more than one officer or body an annual report to be included in the legislative printing, the contractor shall not print such report for the year more than once at public expense, and the filing of a copy of the report as so printed shall be deemed a compliance with any law requiring a report to any other officer or body than the one to which the original manuscript report was submitted; and any institution which makes a report to any bureau, department or commission, which report is thereafter included in the annual report of said bureau, department or commission to the legislature, shall not be entitled for its own use to additional copies of said report, unless otherwise specifically provided.

All extra copies of reports printed for the use of departments, institutions and boards shall be delivered by the contractor to said state officers, departments, institutions and boards.

All copies of messages and reports printed for the use of the legislature shall be delivered, one-third to the clerk of the senate and two-thirds to the clerk of the assembly, and shall be distributed as said clerks, respectively, shall direct.

§ 6. **Proposals for legislative printing.**—The said printing board shall, on or before the first day of March, nineteen hundred and eighteen, and in each year thereafter, give notice in such newspapers as it shall determine will most likely give adequate notice thereof, that it will, thirty days after the publication of said notice and on a day, and at a place stated therein, receive sealed proposals for the legislative printing, the work to be performed as prescribed by law and in the notice published by said board for the fiscal year then next ensuing, except that in the year nineteen hundred and seventeen, said printing board shall advertise and let under existing law, said legislative printing contract for the term commencing October first, nineteen hundred and seventeen, and ending on June thirtieth, nineteen hundred and eighteen. Said board shall prepare, in duplicate, specifications for the legislative printing and shall invite all bids upon such specifications, and shall let all contracts upon such specifications, and such specifications shall be a part of each said contract and shall not be changed or modified after the contract is awarded. Such duplicate specifications, when prepared, shall be filed not less than ninety days before the letting of said contract, in the office of said board

and in the office of the comptroller of the state and shall be open to public inspection at all times. The board may reject all bids submitted to it in its opinion the lowest bid is excessive. The public notice of the letting of contracts in this section directed to be given, shall be a notice describing said legislative printing, and shall refer to the specifications therefor and to the filing of said specifications in the office of the board and in the office of the comptroller of the state and shall set the time when and the place where the bids invited upon said specifications will be received. The specifications for said legislative printing must set forth in such detail as will adequately inform the proposing bidders of the nature, kind, quality and quantity thereof, and copies of such specifications shall be delivered to all applicants therefor, and at the time when and place where bids are advertised to be received in the manner herein provided the board shall convene in public meeting and shall publicly open the bids received and record them in a book which they shall keep for that purpose, without any change, correction or addition whatever. No bids shall be withdrawn or canceled until after the contract or contracts shall have been awarded, but the board may reject any bids which do not conform to its rules and regulations, and may reject all bids and again advertise for bids in the manner herein provided if in its opinion the interests of the state will be promoted thereby, and it may discriminate in favor of such bid as it may deem most favorable to the state. Every bid received must be a sealed bid, and enclosed therewith the bidder shall deposit with the board a certified check or money for five per centum of the amount of his bid, as a guaranty that he will enter into the contract if it shall be awarded to him. Notice of the requirement of such deposit with the bid shall be embodied in the public notice for such letting, and such notice shall also require, and each contract shall provide, for the giving of a bond in such amount as the board shall prescribe, conditioned for the faithful performance of the contract. The contract when awarded shall be executed in duplicate and one duplicate original thereof shall be forthwith filed in the office of said board and the other duplicate original thereof, together with the bond accompanying said contract, shall be forthwith filed in the office of the comptroller of the state.

Guarantee of performance of contract.—A guarantee under former law in the form required by the state printing board to the effect that if the bidder's proposal was accepted, it would enter into a contract in compliance with it and give the necessary security is sufficient, although not a literal compliance with the requirements of the statute. An unimportant variance in the proposal is not a fatal defect. The guarantee fully carries out the intent of the statute which was to the effect that the performance of the contract or agreement involved in the bid should be guaranteed and thus prevent "straw" bids. *People ex rel. J. B. Lyon Co. v. McDonough* (1903), 173 N. Y. 182, 65 N. E. 963, affg. 1902, 76 App. Div. 257, 78 N. Y. Supp. 462.

Unbalanced bid; lowest bidder.—The state printing board under former law is justified in refusing to award a printing contract to a bidder who had submitted an un-

balanced bid which was very high for "blanks" and very low for "circulars." These terms as used in the State Printing Law have a different meaning than the same terms as used under the law prior to the adoption thereof. The board was justified in determining that according to the use of such terms as defined in the State Printing Law the bid of the relator was not the lowest. *People ex rel. Williams v. McDonough* (1903), 85 App. Div. 162, 83 N. Y. Supp. 125, *affd.* (1903), 176 N. Y. 606, 68 N. E. 1123.

§ 7. **Department printing.**—The department printing, constituting the second part hereinbefore described, shall include the blanks, circulars, blank books, pamphlets, envelopes, letter and note heads, other than those required for the use of the legislature, and all other printing work for the various departments and institutions of the state, other than the legislature, except as hereinbefore provided.

§ 8. **Proposals for department printing.**—The several officers, institutions and departments of the state shall, prior to the first day of February in each year, and oftener whenever necessary, transmit to the printing board an estimate in writing showing in detail all printing required for such office, institution or department during the ensuing fiscal year and containing such information with regard thereto as shall be required by the rules and regulations of said board. Said board shall, on or before the first day of May in each year, give notice in such newspapers as it shall determine will be most likely to give adequate notice to bidders, that it will, thirty days after the publication of such notice, and on a day named therein, receive sealed proposals for department printing provided to be furnished under this chapter, the same to be furnished as prescribed by law and in the notice published by said board for the fiscal year following the publication of said notice, except that in the year nineteen hundred and eighteen, said board shall advertise and let said department printing contract for the term commencing October first, nineteen hundred and eighteen, and ending on June thirtieth, nineteen hundred and nineteen. Said board shall prepare, in duplicate, specifications for all department printing to be contracted for and shall invite all bids upon specifications, and shall let all contracts upon such specifications, and such specifications shall be a part of each said contract and shall not be changed or modified after the contract is awarded. Such duplicate specifications, when prepared, shall be filed not less than ninety days before the letting of said contract, in the office of said board and in the office of the comptroller of the state and shall be open to inspection at all times. The board may reject all bids submitted to it if in its opinion the lowest bid is excessive, and it may discriminate in favor of such bid as it may deem most favorable to the state. The public notice of the letting of contracts herein directed shall refer to the specifications therefor and to the filing of said specifications in the office of the printing board and in the office of the comptroller of the state and shall set the time when and the place where the bids invited upon said specifications will be re-

ceived. The specifications for such department printing must be set forth in such detail as will adequately inform the proposing bidders of the nature, kind, quality and quantity thereof. Copies of such specifications shall be delivered to all applicants therefor, except that the said specifications may provide, in addition to the items specified therein, for the furnishing of additional department printing described in said items under the terms of the contract to be let therefor without stating the quantity thereof. The said specifications shall also provide that the bidders shall present their proposals in detail, bidding upon the several items set forth in the specifications. At the time when and at the place where bids are advertised to be received in the manner herein provided, the printing board shall convene in public meeting and shall publicly open the bids received and record them in a book which it shall keep for that purpose, without any change, correction or addition whatever. No bids shall be withdrawn or canceled until after the contract or contracts shall have been awarded, but the board may reject any bids which do not conform to its rules and regulations, and may reject all bids and again advertise for bids in the manner herein provided if in its opinion the interests of the state will be promoted thereby. Every bid received must be a sealed bid, and enclosed therewith the bidder shall deposit with the board a certified check or money for five per centum of the amount of his bid, as a guaranty that he will enter into the contract if it shall be awarded to him. Notice of the requirement of such deposit with the bid shall be embodied in the public notice of such letting, and such notice shall also require, and each contract shall provide, for the giving of a bond in such manner as the board shall prescribe, conditioned for the faithful performance of the contract. The contract when awarded shall be executed in duplicate and one duplicate original thereof shall be forthwith filed in the office of said board and the other duplicate original thereof, together with bond accompanying said contract, shall be forthwith filed in the office of the comptroller of the state. Separate contracts may be let by said printing board, at any time, for engraving, lithographing or maps.

See notes to § 6.

§ 9. Session laws.—The said printing board shall, on or before the first day of April in each year, give notice in such newspapers as it shall determine will most likely give adequate notice thereof, that it will, thirty days after the publication of said notice and on a day and at a place stated therein, receive sealed proposals for the printing in the city of Albany for the use of the state of three thousand copies, or such additional number as the legislature may by concurrent resolution or otherwise order, of the session laws, with the indexes thereto, including all slips of the laws, and the publication of the official and public editions of the session laws and the binding thereof, the work to be performed as prescribed by said printing board, and in the notice published by said board for the fiscal

year then next ensuing, except that in the year nineteen hundred and eighteen, said board shall advertise and let said printing of the sessions laws contract for the term commencing January first, nineteen hundred and nineteen, and ending on June thirtieth, nineteen hundred and nineteen. Said board shall prepare, in duplicate, specifications for the printing of said session laws, including all slips of the laws, the publication of the official and public editions of the session laws and the binding thereof, and shall invite all bids upon such specifications and shall let all contracts upon such specifications, and such specifications shall be a part of each said contract and shall not be changed or modified after the contract is awarded. Such duplicate specifications, when prepared, shall be filed not less than ninety days before the letting of said contract in the office of said board and shall be open to public inspection at all times. The board may reject all bids submitted to it if in its opinion the lowest bid is excessive, and it may discriminate in favor of such bid as it may deem most favorable to the state and to the public. The public notice of the letting of contracts in this section directed to be given, shall be a notice describing the said session laws, including said slips, publication and binding, and shall refer to the specifications therefor and to the filing of said specifications in the office of the board and in the office of the comptroller of the state, and shall set the time when and the place where the bids invited upon said specifications will be received. The specifications for said session laws, slips, publications and binding must set forth in such detail as will adequately inform the proposing bidders of the nature, kind, quality and quantity thereof, and copies of such specifications shall be delivered to all applicants therefor, and at the time when and place where bids are advertised to be received in the manner herein provided the board shall convene in public meeting and shall publicly open the bids received and record them in a book which they shall keep for that purpose, without any change, correction or addition whatever. No bids shall be withdrawn or canceled until after the contract or contracts shall have been awarded, but the board may reject any bids which do not conform to its rules and regulations, and may reject all bids and again advertise for bids in the manner herein provided if in its opinion the interests of the state will be promoted thereby. Every bid received must be a sealed bid, and enclosed therewith the bidder shall deposit with the board a certified check or money for five per centum of the amount of his bid, as a guaranty that he will enter into the contract if it shall be awarded to him. Notice of the requirement of such deposit with the bid shall be embodied in the public notice of such letting, and such notice shall also require, and each contract shall provide, for the giving of a bond in such amount as the board shall prescribe, conditioned for the faithful performance of the contract. The contract when awarded shall be executed in duplicate and one duplicate original thereof shall be forthwith filed in the office of said board and the other duplicate original thereof, together with the bond accompanying said contract, shall be forthwith filed in the office of the comptroller of the state.

§§ 10-12, 20, 21.

Laws repealed.

L. 1917, ch. 667.

References.—Contents and preparation of session laws, Legislative Law, §§ 44, 45. Officers and institutions entitled to session laws, Id. § 46.

§ 10. **Audit of accounts by comptroller.**—The comptroller shall audit all bills and accounts presented under the contracts made by said printing board in the manner herein provided. Each officer, institution and department of the state shall, upon the receipt of any printing, make a true and correct itemized statement and account thereof and shall forthwith transmit the same to the comptroller of the state and a copy thereof to the printing board.

§ 11. **Right to annul contracts.**—Upon the failure or non-performance of the terms of any of the contracts set forth in this chapter on the part of the contractors with the state, the printing board may annul the contract in which default is made and the comptroller shall withhold payment from the contractor for all work done by him until the damage to the state shall be ascertained by proper adjudication, and the said board may readvertise and enter into a contract for the balance of the uncompleted term of any contract so annulled or abrogated in the manner prescribed in the provisions of this chapter.

§ 12. **Complaints against contractor.**—Complaints for violation of any of the terms of a contract on the part of the contractor for state printing shall be made in writing to the printing board, who shall and are hereby empowered and directed, in their discretion, to take such action as will afford the necessary and proper relief.

ARTICLE 3.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 20. Laws repealed.

21. When to take effect.

§ 20. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 21. **When to take effect.**—This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1909	60	All	1915	193	All
1910	392	All			
(This is the schedule attached to L. 1909, ch. 60 and is here included for reference.)					
1784	65	38	1832	114	All
1812	239	18	1840	1	All
1814	20	All	1843	4	All
(38th Sess.)			1870	113	All
1814	200	20, 21	1875	634	1, ¶ 109
1816	236	18	1892	643	All
1821	65	All	1892	682	70-79
1823	97	All	1893	24	3
1824	326	All	1894	732	All

L. 1912, ch. 502.			Establishment of state reformatory.			§§ 1, 2.		
LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION			
1895	859	1.	1906	330	All			
pt. amending last two sentences of L.			1906	359	All			
1892, ch. 378, § 19			1906	417	All			
1898	187	All	1906	476	All			
1901	507	All	1908	274	All			
1905	760	All	1908	275	All			

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

(Attached to L. 1909, ch. 60.)

Where a statute has been specifically repealed, that and the repealing statute are given without explanatory note.

L. 1784, ch. 65, § 38.—Relates to printing of the session laws of 1784. Temporary and obsolete.

L. 1812, ch. 239, § 18.—L. 1813, ch. 202, repeals "all acts and parts of acts heretofore passed by the legislature of this state which come within the purview or operation of any of the acts passed during the present session of the legislature, commonly called the revised acts"; statute cited comes within the purview of 1 R. L., ch. 77, § 12, and is thus repealed by L. 1813, ch. 202.

L. 1814, ch. 20.—Act appointing a state printer and regulating duties and compensation. Temporary and obsolete.

L. 1814, ch. 200, §§ 20, 21.—Act regulating state printing. Section 20 repealed as appears in schedule; § 21 obsolete.

L. 1821, ch. 65.—Act appointing Moses I. Cantline and Isaac Q. Leake state printers. Obsolete.

L. 1823, ch. 97.—Act appointing Edwin Croswell as one of the state printers. Obsolete.

L. 1824, ch. 326.—Act relating to state printers. Obsolete.

L. 1832, ch. 114.—Act directing the printing and distribution of the Poor Laws. Temporary and obsolete.

L. 1840, ch. 1.—Act appointing a state printer and regulating the state printing. Temporary and obsolete.

L. 1881, ch. 621.—Statute cited amends L. 1881, ch. 215, § 11. L. 1881, ch. 215, was repealed by L. 1892, ch. 682, § 80. Both original and amendment were superseded by the Legislative Law (L. 1892, ch. 682, art. 4), and by the State Printing Law (L. 1901, ch. 507). The amendatory act should also be repealed.

L. 1901, ch. 507.—This statute, which is the "old" State Printing Law, is recommended for repeal because all its live provisions have been consolidated in the State Printing Law.

L. 1905, ch. 760.—Consolidated in State Printing Law, § 7.

L. 1906, ch. 330.—Consolidated in State Printing Law, § 2.

L. 1906, ch. 359.—Consolidated in State Printing Law, § 12.

L. 1906, ch. 417.—Consolidated in State Printing Law, §§ 5, 15.

L. 1906, ch. 476.—Consolidated in State Printing Law, §§ 8, 9, 10.

STATE PRISONS.

Retirement of guards; Prison L., §§ 410, 411.

STATE RACING COMMISSION.

See Membership Corporations L., §§ 280 ff.

STATE REFORMATORY.

L. 1912, ch. 502.—An act to establish a state reformatory for misdemeanants.

§ 1. Establishment and purposes.—A state reformatory for misdemeanants is hereby established for the reformation and the educational, industrial and moral instruction and training of males under conviction and sentence for commission of misdemeanors or other minor offenses.

§ 2. Board of managers.—The general management and control of the

said state reformatory for misdemeanants shall be in charge of a board of managers appointed pursuant to the provisions of the state charities law.

§ 3. **Selection of site and construction.**—The said board shall proceed forthwith to select a site for the said reformatory and, upon the approval of the governor, to purchase such site. In the selection of the site, due consideration shall be given to healthfulness of location, fertility of soil, water supply, drainage and accessibility. It shall be the duty of the said board to prepare the grounds so purchased for use as a site for the said reformatory, to provide a water supply and system of drainage therefor, to determine what buildings are necessary to be erected thereon for the proper housing and educational and industrial training of not less than five hundred inmates, and to act as a board of managers in the erection of the said buildings and in the expenditure of the moneys herein or hereafter appropriated for the purchase and improvement of the said site. In all the work of construction and improvement, the labor of convicts shall be employed wherever and so far as practicable. Each of the said managers shall receive his necessary expenses incurred in connection with his work for the said reformatory.

§ 4. **Commitment; term of detention.**—As soon as the said buildings and improvements shall be completely finished or so far finished as to be ready for use as a reformatory and ready for the reception of inmates, the said managers shall officially notify the several county clerks of all the counties of the state of that fact. It shall be the duty of the said county clerks immediately on receipt of the said official notification to transmit a copy thereof to each and all of the several courts in their respective counties and to each and all of the several justices of the supreme court and other judges, justices and magistrates, residing or sitting in their respective counties. Thereafter any male between the ages of sixteen and twenty-one years inclusive, convicted by any court or magistrate of a misdemeanor, or other minor offense for which he might be sentenced to imprisonment, may be sentenced and committed to the said institution, to be there confined, as herein provided. Such commitments shall not be for a definite term, but any such male at any time after his commitment may be paroled or discharged by the said board of managers, but shall not in any case be detained longer than three years. If through oversight or otherwise any male be sentenced to imprisonment in the said institution for a definite period of time, such sentence shall not for that reason be void, but the person so sentenced shall be entitled to the benefits and subject to the liabilities of this act, in the same manner and to the same extent as if such sentence had been for an indefinite period of time, in the manner herein provided for. Commitments to the said institution shall be as herein provided, anything in the penal law to the contrary notwithstanding. In rendering such sentence, preference may be given to minors, over adults, in view of the limited room in said reformatory of the reception of inmates.

L. 1911, ch. 639. Management of state training school for boys. §§ 1, 2.

§ 5. Appropriation.—\$50,000.

STATE REPORTER.

See Judiciary Law, §§ 430-438.

STATE SCHOOL AT INDUSTRY.

Managers, State Charities L., § 180.

STATE SEALER.

Appointment and salary; Executive Law, § 100. Duties; General Business Law, §§ 11-17.

STATE SURVEY.

L. 1900, ch. 386.—“An act authorizing the state engineer and surveyor to continue to co-operate with the director of the United States Geological Survey in making a topographic survey and map of the state of New York and making an appropriation therefor.”

Temporary.

STATE SUPERINTENDENT OF WEIGHTS AND MEASURES.

Appointment and salary; Executive Law, § 100. Duties; General Business Law, § 11. Transferred to Department of Farms and Markets; Farms and Markets Law, §§ 21, 100.

STATE TRAINING SCHOOL FOR BOYS.

See also Juvenile Delinquents.

L. 1911, ch. 639.—An act in relation to the management of the New York State Training school for Boys, and the control of inmates committed thereto.

Section 1. New York State Training School for Boys continued.—The New York State Training School for Boys established by chapter seven hundred and eighteen of the laws of nineteen hundred and four and as amended by chapter one hundred and thirty-three of the laws of nineteen hundred and five, chapter six hundred and seventeen of the laws of nineteen hundred and six, chapter three hundred and sixty-eight and chapter six hundred and sixty-five of the laws of nineteen hundred and seven, and chapter two hundred and sixty-eight of the laws of nineteen hundred and eight is hereby continued and shall be under the management and control of a board of seven managers to be appointed in accordance with section fifty-one of the state charities law.

§ 2. Powers and duties of managers.—The board of managers shall:

1. Have the general control of such institution and shall make such by-laws, rules and regulations for the government, discipline, employment, management and disposition of the officers thereof, and of the children committed to their care, as to them may seem just and proper.

2. Appoint a superintendent and such other officers and employees as they may deem necessary for the conduct and welfare of the institution under their charge.

3. Report in detail annually to the legislature, on or before the fifteenth day of January, the number of children received by them into the institution and the disposition of such children, their receipts and expenditures, their proceedings during the preceding year, and all other matters which they deem advisable to be brought to the attention of the legislature.

§ 3. **Superintendent.**—The superintendent shall be the chief executive officer of such school, and, subject to the by-laws, rules and regulations thereof and the powers of the board of managers, shall have control of the internal affairs and shall maintain discipline therein and enforce a compliance with, and obedience to, all by-laws, rules and regulations adopted by the board of managers for the government, discipline and management of such school. He shall receive into such institution, under the direction of the board of managers, all children legally committed thereto by any court having authority to make such commitment.

§ 4. **Commitment of children.**—Male children under the age of twelve years convicted of crime amounting to felony, or between the ages of seven and sixteen years deemed guilty of juvenile delinquency, in the first, second, third or ninth judicial districts, may be committed to the New York State Training School for Boys in like manner as is now provided in sections twenty-one hundred and eighty-four and twenty-one hundred and eighty-six of the penal law for commitments to the State Industrial School and the House of Refuge established by the Society for the Reformation of Juvenile Delinquents in the city of New York. The courts shall ascertain by such proof as may be in their power, the age of every juvenile delinquent committed to such institution and insert such age in the order of commitment, and the age thus ascertained shall be deemed and taken to be the true age of such juvenile delinquent.

§ 5. **Register.**—Upon the commitment of a juvenile delinquent to such school, the superintendent thereof shall cause to be entered in the register kept for that purpose, the date of admission, name, age, place of birth, nationality, residence, name and residence of parents or guardians, and such other facts as may be ascertained, relating to the origin, condition, peculiarity or inherited tendencies of such juvenile delinquent.

§ 6. **Discipline and control of inmates.**—The managers of the New York State Training School for Boys shall receive and detain during minority, every male juvenile delinquent committed thereto in pursuance of law, and shall cause the children detained therein or under their care to be instructed in such branches of useful knowledge, and to be regularly and systematically employed in such lines of industry as shall be suitable to their years and capacities, and shall cause such children to be subjected to such discipline as, in the opinion of such board, is most likely to effect their reformation. The managers of such institution, with the consent

of any child committed thereto, may bind out as an apprentice or servant, such child during the time they would be entitled to retain him, to such persons and at such places to learn such trade and employment as in their judgment will be for the future benefit and advantage of such child.

§ 7. **Military drill.**—The superintendent of said training school may, with the approval of the board of managers, institute and establish a system of rules and regulations for uniforming, equipping, officering, disciplining and drilling in military art, the inmates of such institution, and for the exercise and drill of such inmates according to the most approved tactics, such number of hours daily as such superintendent may deem advisable.

§ 8. **Effects of alcoholic drinks and narcotics to be taught.**—The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in the school connected with such training school for not less than four lessons a week for ten or more weeks each year. All pupils who can read shall study this subject from suitable text books, but pupils unable to read shall be instructed in it orally by teachers using text books graded to the capacities of the pupils pursuing such subject.

§ 9. **Transfer of inmates to jail or Eastern New York Reformatory.**—If a juvenile delinquent confined in the New York State Training School for Boys by commitment for a crime amounting to felony, is guilty of attempting to set fire to any building belonging to said institution or to any combustible matter for the purpose of setting fire to such building, or of openly resisting the lawful authority of an officer thereof, or of attempting to excite others to do so, or shall by gross or habitual misconduct exert a dangerous and pernicious influence over the other juvenile delinquents, the board of managers shall submit a written statement of the facts to the county judge of Westchester county and apply to him for an order authorizing a temporary confinement of such juvenile delinquent in the Westchester county jail or if over sixteen years of age, in the Eastern New York Reformatory. Such judge shall forthwith inquire into the facts, and if it appear that the statement is substantially true, and that the ends desired to be accomplished by the institution will be best promoted thereby, he shall make an order authorizing the confinement of such juvenile delinquent in such jail or reformatory for the limited time expressed in the order, and the keeper or superintendent of such jail or reformatory shall receive such juvenile delinquent and detain him during the time expressed in such order, and at the expense of the maintenance fund of the New York State Training School for Boys. At the expiration of the time limited by such order, or sooner, if the board of managers of such training school shall direct, the keeper or superintendent of such jail or reformatory shall return such juvenile delinquent to the custody of the superintendent of said training school.

§ 10. **Confinement of juvenile delinquents under sentence by the courts**

of the United States.—The superintendent of the New York State Training School for Boys shall receive and safely keep in such school, subject to the regulations and discipline thereof, and the provisions of this act, any male criminal under the age of sixteen years convicted of any offense against the United States, under sentence of imprisonment in any court of the United States, sitting within this state, until such sentence be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence.

STATE TRAINING SCHOOL FOR GIRLS.

See State Charities Law, §§ 199-214.

STATE TREASURER.

Salary, undertaking, deputies, etc.; Executive Law, §§ 50-54.

STATE WRITS.

Provisions applicable to two or more; Code Civ. Pro. §§ 1991-2007.

STATUTE OF FRAUDS.

See Personal Property Law; Real Property Law.

STATUTES.

L. 1913, ch. 673.—An act authorizing the preparation of an index of the session laws and statutes of the State of New York.

Repealed by L. 1916, ch. 378. See L. 1917, ch. 332.

L. 1917, ch. 332.—An act to provide for the preparation of indexes of the statutes, and making an appropriation therefor.

Section 1. There shall be prepared, under the supervision of the legislative bill drafting commissioners, an index of the consolidated laws, as amended, and of other general statutes enacted since the consolidated laws. There shall also be prepared, under such supervision, a separate index of the unconsolidated laws enacted since seventeen hundred and seventy-seven, being the laws classed as private, special and local. The work heretofore done pursuant to chapter six hundred and seventy-three of the laws of nineteen hundred and thirteen shall be utilized so far as practicable.

§ 2. Both of such indexes shall include the laws of nineteen hundred and eighteen, and shall be published as supplemental volumes of the session laws of that year. The necessary printing for such indexes shall be done by the legislative printer and payment therefor shall be made out of the appropriation for legislative printing.

§ 3. The compensation of the persons employed and other expenses incurred in the preparation of such indexes shall be paid on vouchers approved by the temporary president of the senate or the speaker of the assembly.

L. 1917, ch. 325.—An act to provide for the preparation of a supplement to the statutory record of the unconsolidated laws, and making an appropriation therefor.

Cross-references.

STATUTORY CONSTRUCTION.

See General Construction Law; Consolidated Laws; Repealing Laws.

STATUTORY REVISION.

The statutory revision commission was created by L. 1889, ch. 289. By chapter 125 of the Laws of 1891, it was directed to publish the colonial laws. This work was completed in 1897, and all of L. 1891, ch. 125, is obsolete, except § 5, as amended by L. 1897, ch. 400, which relates to the colonial laws as evidence, and will be found under the heading "Evidence." The work of the commission in the revision of the statutes was continued by appropriations from year to year. L. 1895, ch. 1036, created a code commission, consisting of three members. The governor designated the statutory revision commissioners as such commission. A large number of bills presented by the statutory revision commission have been adopted by the legislature. By L. 1900, ch. 664, the statutory revision commission and the code commission were abolished, the act taking effect January 1, 1901. During the session of 1900, the commission presented many bills to the legislature, with the view of completing the revision of the general laws. The commission also presented a complete plan of code revision, including the revision of the Civil, Penal and Criminal Codes. All these bills, except three which passed and became laws, were referred to a joint legislative committee, which was directed to report upon them to the next legislature. The act of 1900 repealed L. 1889, ch. 125, and L. 1895, ch. 1036. The committee reported to the legislature of 1901 adversely to the bills under consideration, and recommended a plan of its own for completing the revision, but no action was taken by the legislature.

L. 1891, ch. 372, directed the secretary of state to republish the session laws from 1802 to 1814, inclusive, but the appropriation of \$3,000 was deemed inadequate and no action was ever taken under the law.

L. 1895, ch. 1025, authorized the governor to appoint a commission to recommend changes in the methods of legislation. The commission so appointed reported to the legislature of 1896, and the act is now obsolete.

L. 1904, ch. 664, created a board of statutory consolidation, which made a final report to the legislature of 1909, proposing 61 chapters of the Consolidated Laws. All of these were enacted by the legislature except the Public Service Commissions Law and the Railroad Law, which were enacted in 1910. See preface. See also, preface, prepared by the board of statutory consolidation to the official edition of the Consolidated Laws, published as a part of the session laws of 1909, in which the subject of statutory revision in this state is exhaustively treated.

STEAM.

Unauthorized pressure; Penal Law, §§ 1891, 1893.

STEAM HEATING CORPORATIONS.

Included under jurisdiction of commission; Public Service Commissions L., §§ 2, 5.

STENOGRAPHERS.

Appointment, compensation, duties, etc.; Judiciary Law, §§ 104-a, 161, 290-319. Disclosing evidence before grand jury; Penal Law, § 1784.

STOCK.

Transfer of shares, how made; Personal Property L., §§ 162-186. Illegal transactions in regard to stock; Penal L., §§ 951-957. Circulating false rumors as to; Penal L., § 926.

STOCK CORPORATION LAW.

L. 1909, ch. 61.—"An act relating to stock corporations, constituting chapter fifty-nine of the consolidated laws."

[In effect February 17, 1909.]

CHAPTER LIX OF THE CONSOLIDATED LAWS.**STOCK CORPORATION LAW.**

- Article 1. Short title (§ 1).
 2. General provisions (§§ 5-24e).
 3. Directors and officers (§§ 25-35).
 4. Stock and stockholders (§§ 50-70).
 5. Laws repealed; when to take effect (§§ 80, 81).

ARTICLE I.**SHORT TITLE.****Section 1. Short title.**

§ 1. **Short title.**—This chapter shall be known as the "Stock Corporation Law."

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 1, in part, as amended by L. 1892, ch. 688.

Explanatory note.—See note to General Corporation Law, § 1. The Stock Corporation Law was proposed by the statutory revision commission and originally enacted as ch. 564, Laws of 1890. In 1892, the commission proposed a new stock corporation law, amending the former act throughout (L. 1892, ch. 688). With the exception of a few slight amendments, this act was not changed until the enactment of ch. 354 of the Laws of 1901, which effected many important changes in relation to the liability of directors and stockholders, and in eliminating the restrictive features of the former act. In view of the re-revision in 1892, and the important amendments of 1901, the editors have not attempted to indicate the original source of each section. Reference is made generally to the important changes effected by ch. 354 of the Laws of 1901. Former decisions of the courts are frequently superseded by the amendments. The board of statutory consolidation changed the arrangement of the sections and transferred §§ 57 and 61 to the General Corporation Law, as §§ 220, 221 of that chapter.

This statute was intended for the purpose of protecting stockholders against improvident acts of trustees, and the provision for filing is merely to perpetuate evidence of the stockholder's consent. *Black v. Ellis* (1908), 129 App. Div. 140, 111 N. Y. Supp. 347, *affd.* (1910), 197 N. Y. 402, 90 N. E. 958.

ARTICLE II.

GENERAL PROVISIONS.

- Section 5. Application of article.
6. Power to borrow money and mortgage property.
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 - 24-a. Comptroller's approval of reduction of capital.
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§ 5. Application of article.—This article except sections eight, fifteen, sixteen, seventeen and eighteen thereof, shall not apply to moneyed corporations.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 1, in part, as amended by L. 1892, ch. 688.

Consolidators' note.—Title of article changed by leaving out words "powers; reorganization," and substituting "provisions." This article, as heretofore amended, did not relate solely to general powers and reorganization, but to other matters, and the proposed title "General Provisions" more accurately describes the matter contained in the article and makes the title uniform with other statutes.

The words "except sections 8, 15, 16, 17 and 18 thereof" added for the reason that article 2 does not apply to moneyed corporations, but as sections 8, 15, 16, 17 and 18 are general in scope and substance, applying to moneyed corporations as well as others, and are now placed in article 2 (where they properly belong), they have been excepted from the limitation of the effect of the article in regard to moneyed corporations.

Attention is here called to the fact that § 14 (former § 7) prohibiting monopolies and unlawful combinations does not apply to moneyed corporations, i. e., banks, trust companies, insurance companies, etc., as the law now stands, but no good reason is apparent why that class of corporations should be excepted from the general prohibition.

* So in original.

§6. Power to borrow money and mortgage property.—In addition to the powers conferred by the general corporation law, every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and it may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase-money mortgages and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary, of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by like consent, the directors under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation, the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the directors shall from time to time, authorize an increase of capital stock sufficient for that purpose by causing to be filed in the office of the secretary of state, and a duplicate thereof in the office of the clerk of the county where the principal place of business of the corporation shall be located, a certificate under the seal of the corporation, subscribed and acknowledged by the president and secretary of the corporation setting forth,

1. A copy of such mortgage; or resolution of directors authorizing the issue of such bonds;

2. That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such mortgage or resolution of directors authorizing the issue of such bonds by such corporation;

3. A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock of the corporation necessary for the purpose of such conversion;

4. The amount of capital theretofore authorized, the proportion thereof actually issued and the amount of the increased capital stock.

If the corporation be a railroad corporation the certificate shall have

indorsed thereon the approval of the public service commission having jurisdiction thereof. When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased to the amount specified in such certificate.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 2, as amended by L. 1892, ch. 337; L. 1892, ch. 688; L. 1901, ch. 354, and L. 1905, ch. 745.

The amendment of 1901 to the former law made the following changes: Corporations are given the unrestricted right to borrow money; the consent of stockholders to mortgages authorized by contract prior to the revision of 1890, is not required; an official certificate of consent is to be filed instead of the consents themselves, the originals remaining with the corporation.

The amendment of 1905 added the latter part of the section prescribing the form of certificate where the capital stock is insufficient to meet the conversion.

References.—Consideration for issue of bonds, § 55, post. Presumption as to validity of corporate mortgage, § 7, post. Guarantee of bonds of another corporation, § 8, post. Powers of corporations generally, General Corporation Law, §§ 10, 11. Mortgages of corporate real property, Id. §§ 70-76. Receivers to be appointed in actions to foreclose mortgages, Id. §§ 306, 308. Powers of railroad corporation to issue bonds, Railroad Law, § 8, subd. 10. Consent of public service commission, when required, for issue of bonds by public service corporations. Public Service Commissions Law, § 55; of gas and electric corporations, Id. § 69; of steam corporations, Id. § 82; of telephone and telegraph corporations, Id. § 101.

This section is for the protection and benefit of creditors as well as stockholders, and the remedy thereunder may be invoked by a trustee in bankruptcy. In re Progressive Wall Paper Corp. (1916), 230 Fed. 171.

The term "obligations," as used in this section, embraces all instruments in writing, however informal, and with or without seal, whereby the borrowing corporation contracts with a lender for the repayment of the sum borrowed. *Jacobs v. Monaton R. I. Corp.* (1914), 212 N. Y. 48, 54, 105 N. E. 968.

Inapplicable to moneyed corporations. *Hyde v. Equitable Life Assurance Soc.* (1908), 61 Misc. 518, 527, 116 N. Y. Supp. 219. Provision requiring consent of stockholders to mortgage of property does not apply to foreign corporations owning property in this state. In re *Hefron Co.* (1914), 216 Fed. 642. Does not apply to purchase money mortgage. *Clement v. Congress Hall* (1911), 72 Misc. 519, 132 N. Y. Supp. 16.

General power to mortgage.—*Carpenter v. Blackhawk Gold Mining Co.* (1875), 65 N. Y. 43.

Mortgage to secure overissue of bonds is not void. *New Britain Nat. Bank v. A. B. Cleveland Co.* (1895), 91 Hun 447, 36 N. Y. Supp. 387, *affd.* (1899), 158 N. Y. 722, 53 N. E. 1128.

Validity and effect of certificates issued by a realty investing corporation. *Jacobs v. Monaton R. I. Corp.* (1914), 212 N. Y. 48, 105 N. E. 968.

Power to borrow money and to issue and dispose of its obligations for these purposes may be exercised through the intervention of a trustee. *Venner v. New York Central & H. R. R. Co.* (1914), 160 App. Div. 127, 139, 145 N. Y. Supp. 725, *affd.* (1916), 217 N. Y. 615, 111 N. E. 487. If a stock corporation, engaged in business in violation of the Banking Law, attempts to borrow money in furtherance of such business, this section will not aid it. *Jacobs v. Monaton R. I. Corp.* (1913), 160 App. Div. 449, 463, *revd.* (1914), 212 N. Y. 48, 105 N. E. 968. A distinction must be drawn between a corporation incidentally engaged in transactions in order to raise money for their own use and those formed for the purpose of doing so and dealing in such transactions as their principal business. *Jacobs v. Monaton R. I.*

Corp., diss. op. of Page (1913), 80 Misc. 649, 659, 141 N. Y. Supp. 1033, *affd.* (1913), 160 App. Div. 611, 145 N. Y. Supp. 611, *affd.* (1914), 212 N. Y. 48, 105 N. E. 968.

Consents of stockholders.—See § 7, as to presumptions. Indispensable. *Matter of Wendler Machine Co.* (1896), 2 App. Div. 16, 37 N. Y. Supp. 444. Original stockholders need not be of record. *Hamilton Trust Co. v. Clemes* (1897), 17 App. Div. 152, 45 N. Y. Supp. 141, *affd.* (1900), 163 N. Y. 423, 57 N. E. 614. Consent by two shareholders, constituting all the stockholders, to mortgage to president of corporation. *Matter of Commissioners of State Reservation* (1890), 122 N. Y. 177. May be recorded simultaneously with mortgage, *Everson v. Eddy* (1891), 36 N. Y. St. Rep. 763, 12 N. Y. Supp. 872; *Matter of Commissioners of State Reservation*, *supra*; or, if given before execution of mortgage, may be filed thereafter. *Martin v. Niagara Falls Mfg. Co.* (1890), 122 N. Y. 165, 25 N. E. 269. Mortgage executed without filing of consent, valid as to subsequent mortgagee with notice. *Rochester Savings Bank v. Averell* (1884), 96 N. Y. 467. Stockholders only can object to mortgage without consent. *Market & Fulton Nat. Bank v. Jones* (1894), 7 Misc. 207, 27 N. Y. Supp. 677, *affd.* (1895), 90 Hun 605, 35 N. Y. Supp. 1111. What constitutes consent, query. *Beebe v. Richmond Light, Heat & Power Co.* (1896), 3 App. Div. 334, 38 N. Y. Supp. 395.

A mortgage, executed and filed by a corporation with the knowledge and consent of two-thirds of its stockholders, will not be cancelled and set aside as null and void in an action brought by the receiver of said corporation because such consent was not in writing and filed in the office of the county clerk. *Black v. Ellis* (1908), 129 App. Div. 140, 113 N. Y. Supp. 558, *affd.* (1910), 197 N. Y. 402, 90 N. E. 958.

The regulation of the assent of two-thirds of the stockholders to the execution of a mortgage by the stockholders is for the protection of the stockholders against collusive acts of the officers, and in the absence of objection by those intended to be benefited the form of assent is immaterial, and the execution of a mortgage by the president with the written consent of a stockholder, when together they owned more than two-thirds of the stock, is valid. *G. V. B. Mining Co. v. First Nat. Bank* (1899), 95 Fed. 23.

The requirement of the consent of stockholders is not for the benefit or protection of the stockholders alone, but also for the corporation itself and its creditors. *In re Progressive Wall Paper Corp.* (1916), 230 Fed. 171. See *contra*, *Glover v. Ehrlich* (1909), 62 Misc. 245, 114 N. Y. Supp. 992.

Effect of failure to have consent of two-thirds of stockholders.—Where property was transferred to a corporation, subject to a chattel mortgage, which mortgage upon its expiration was renewed and properly executed and recorded, but without the consent of two-thirds of the stockholders, the mortgagee, upon the bankruptcy of the corporation, is left as a general creditor for the amount of her debt. *In re Eagle Steam Laundry Co.* (1910), 176 Fed. 740.

A chattel mortgage executed by a corporation without compliance with this section is invalid, and cannot be subsequently ratified. *In re Post & Davis Co.* (1914), 219 Fed. 171.

Rights of trustee of mortgage inure to bondholders. *O'Beirne v. Allegheny & Kinzua R. R. Co.* (1897), 151 N. Y. 372, 45 N. E. 876.

Lien of mortgage covering after-acquired property.—A mortgage given by a stock corporation which purports to cover after-acquired real estate, and such real estate is acquired, creates in equity a lien upon such property superior to the lien of a subsequent incumbrancer by mortgage or judgment; and is superior to title acquired on the foreclosure of a mechanic's lien on the lands mortgaged. *United States Mortgage & Trust Co. v. Eastern Iron Co.* (1907), 120 App. Div. 679, 105 N. Y. Supp. 291, *affd.* (1909), 195 N. Y. 589, 89 N. E. 1114. See also *Platt v. N. Y. and Sea*

Beach R. R. Co. (1896), 9 App. Div. 87, 41 N. Y. Supp. 42, *affd.* (1897), 153 N. Y. 670, 48 N. E. 1106.

Lien of mortgage on future earnings, when attaches, etc. N. Y. Security Co. v. Saratoga Gas & Elec. Co. (1899), 159 N. Y. 137, 53 N. E. 758, 45 L. R. A. 132, *revg.* (1898), 30 App. Div. 89, 51 N. Y. Supp. 749.

Lien of bondholders is superior to that of a party loaning money to the corporation subsequent to the mortgage. Farmers' Loan & Trust Co. v. Bankers & Merchants' Telegraph Co. (1896), 148 N. Y. 315, 42 N. E. 707, 31 L. R. A. 403.

Wrongful disposition of bonds to secure prior debts. Rights of holders to share in proceeds of foreclosure of mortgage. Shaw v. Saranac Horse Nail Co. (1894), 144 N. Y. 220, 39 N. E. 73.

An assignment by a corporation, the owner of an equity of redemption in real property, of the rents of such property, to the holder of a third mortgage thereon, which was not made by the corporation and the payment of which it has not assumed, in order to prevent a threatened foreclosure of the mortgage, is not in violation of this section requiring the assent of stockholders to the execution of a mortgage. Hirsch v. Twelfth Ward Bank (1910), 66 Misc. 290, 122 N. Y. Supp. 1076.

Renewal of mortgage.—A chattel mortgage given under such circumstances as constituted it a purchase money mortgage, contained a covenant to renew every year during the term thereof. The mortgagor transferred the chattels to a corporation which accepted the title thereto subject to the lien of the mortgage and under a covenant on its part to renew, and executed a new mortgage in compliance therewith without obtaining the consent of its stockholders. The court held that the statute requiring the consent of the holders of two-thirds of the capital stock applies to creating a new incumbrance on corporate property and not to keeping alive one on existing property acquired subject to the mortgage and under an agreement to continue it as a valid and subsisting lien; that a court of equity would, upon proper application, have compelled the corporation to perform its contract by giving a new mortgage without the consent of the stockholders, and a decree for specific performance would have followed if all the stockholders had united in opposition thereto. Hence their consent was not necessary to a valid renewal of the mortgage. Black v. Ellis (1910), 197 N. Y. 402, 90 N. E. 958, *affg.* (1908), 129 App. Div. 140, 113 N. Y. Supp. 558.

Defense that a chattel mortgage was not executed in compliance with this section is available, not only to a stockholder or creditor, but to the corporation itself. London Realty Co. v. Coleman Stable Co. (1910), 140 App. Div. 495, 125 N. Y. Supp. 410.

§ 7. Validating corporate mortgages.—Whenever any mortgage affecting property or franchises within this state heretofore or hereafter executed by authority of the board of directors in behalf of any stock corporation, domestic or foreign, of any description, recites or represents in substance or effect that the execution of such mortgage has been duly consented to, or authorized by stockholders, such recital or representation in any such mortgage, after public record thereof within this state, shall be presumptive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law. After any such mortgage heretofore or hereafter shall have been publicly recorded for more than one year in one or more of the counties of this state containing the mortgaged premises or

any part thereof, and the corporation shall have received value for bonds actually issued under and secured by such mortgage, and interest shall have been paid on any of such bonds according to the terms thereof, such recital or representation of such mortgage so recorded shall be conclusive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law, and its validity shall not be impaired by reason of any defect or insufficiency of consent or authority of stockholders or in filing or recording such consent or authority, and such mortgage shall be valid and binding upon the corporation, and those claiming under it, as security for all valid bonds issued or to be issued thereunder, unless such mortgage shall be adjudged invalid in an action begun as hereinafter, in this section, provided. Notwithstanding the foregoing provisions of this section, the invalidity of any such mortgage heretofore recorded because of insufficiency of consent by stockholders may be adjudged in any action for such purpose begun before the first day of April, nineteen hundred and two, and the invalidity of any such mortgage hereafter recorded, because of insufficiency of consent by stockholders, may be adjudged in any action for such purpose begun, within one year after the earliest record of such mortgage in any county in this state, provided in either case that such action shall have been so begun by or in behalf of the corporation by direction of the board of directors acting in their own discretion, or upon the written request of the holders of not less than one-third of the capital stock of the corporation; and in any such action so begun by or in behalf of the corporation, the recitals or representations of the mortgage shall be presumptive evidence only as first above provided. Whenever hereafter, in compliance with any law of this state, the officers of any corporation shall have made and filed and recorded a certificate that the execution of a mortgage hereafter made by the corporation has been duly consented to by stockholders, such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase, for value, any bond or obligation purporting to be secured by such mortgage, at any time when said certificate shall remain of record and uncanceled. Nothing in this section contained shall effect any right or any remedy in respect of any such right of any creditor accrued before this enactment nor shall it dispense with the necessity of obtaining the consent of the public service commission having jurisdiction thereof to any mortgage by a railroad corporation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 8, as added by L. 1901, ch. 354.

Consolidators' note.—This section was formerly § 8. It contained no heading and so the heading "Validating corporate mortgages" has been added. It was made § 7 so that it would follow the other matter relating to corporate mortgages contained in § 6, in order to have all matter relating to the same subject-matter as closely together as possible. The advantage of such transpositions is readily seen, and wherever the same thing could be accomplished in other portions of the statute, it has been done.

L. 1909, ch. 61.

General provisions.

§§ 8, 9.

Constitutionality of retroactive statute providing that certain instruments shall constitute presumptive proof. *Howard v. Moot* (1876), 64 N. Y. 262.

Constitutionality of short statute of limitations.—*People v. Turner* (1889), 117 N. Y. 227, 22 N. E. 1022; *Meigs v. Roberts* (1900), 162 N. Y. 371, 56 N. E. 838; *People v. Turner* (1895), 145 N. Y. 451, 459, 40 N. E. 400, *affd.* (1897), 168 U. S. 90, 42 L. ed. 392, 18 Sup. Ct. 38. See also *Cook on Corporations*, § 782.

Presumptive validity of corporate mortgage.—A mortgage reciting that it is executed and the seal attached by the president and secretary “thereunto duly authorized by its board of directors and by the unanimous consent of its stockholders,” is *prima facie* valid, although it is alleged by the defendant in a suit for foreclosure that the mortgage was executed without compliance with the provisions of section 6 of this law. *Dry Milk Co. v. Dairy Products Co.* (1916), 171 App. Div. 296, 156 N. Y. Supp. 869.

§ 8. Power to guarantee bonds of other corporations.—Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last-known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time, and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 40, in part, as amended by L. 1892, ch. 668, and L. 1902, ch. 601.

Consolidators' note.—Portion of former § 40 has been transferred to article 2 because it is a general provision regulating the powers of stock corporations.

References.—As to public service corporations, see *Public Service Commissions Law*, §§ 55, 69, 82, 101.

Contract of guaranty; presumption of regularity.—A contract written on bonds issued by another corporation, which contract indorsed the bonds and guaranteed to the holder payment in full, to secure a collateral mortgage on its own property, is a contract of guaranty, and not of indorsement, and is within the powers of the corporation. In the absence of evidence to the contrary it will be presumed that the guaranty was authorized by vote of the stockholders as required. *Gay v. Hudson River Electric Power Co.* (1911), 190 Fed. 773.

A business corporation can only guarantee the bonds of another domestic corporation engaged in the same general line of business. *Rept. of Atty. Genl.* (1907) 290.

Section cited.—*Venner v. New York Central & H. R. R. R. Co.* (1914), 160 App. Div. 127, 134, 145 N. Y. Supp. 725, *affd.* (1916), 217 N. Y. 615, 111 N. E. 487.

§9. Reorganization upon sale of corporate property and franchises.—

When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser, his assignee or guarantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes at least two-thirds of whom shall be citizens of the United States and one shall be a resident of this state, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office addresses of the directors for the first year. They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into as provided in section ten of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended, and any and all incorporations based thereon are hereby ratified and confirmed.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 3, as amended by L. 1892, ch. 688; L. 1901, ch. 354; L. 1902, ch. 80, and L. 1904, ch. 706.

The amendment of 1901 to the former law made it permissive to insert in the certificate of organization any provisions in the plan relating to the new corporation or its management. The law prior thereto required any plan or agreement of reorganization to be set out in full in the certificate. See L. 1901, ch. 354, § 5, which saved rights pending when amendment of 1901 took effect.

The amendment of 1902 permitted the assignee or grantee of the purchaser to organize the new corporation, and also added the last sentence.

The amendment of 1904 changed the words "such corporations" at the end of the next to the last sentence to "that corporation."

References.—Place of filing certificate, General Corporation Law, § 5. Reorganization of railroad and other common carrier corporations, Public Service Commissions Law, § 55-a; of steam corporations, Id. § 82-a.

Construction.—*Mayer v. Metropolitan Traction Co.* (1914), 165 App. Div. 497, 150 N. Y. Supp. 1026.

Application of section 9-12. *People ex rel. Third Ave. Ry. Co. v. Public Service Commission* (1911), 145 App. Div. 318, 130 N. Y. Supp. 97, *affd.* (1911), 203 N. Y. 299, 96 N. E. 1011. The enactment of the Public Service Commissions Law did not repeal sections 9 and 12 of the Stock Corporation Law and is not in conflict therewith. The two statutes must be construed together. *People ex rel. Third Avenue Ry. Co. v. Public Service Commissions* (1911), 203 N. Y. 299, 96 N. E. 1011.

Power of Public Service Commission.—Under this section and § 10, since the decision of the Court of Appeals in *People ex rel. Third Avenue Railway Company v. Public Service Commission*, 203 N. Y. 299, 96 N. E. 1011, the commission seems to have but two functions:

1. To determine whether the applicant is in fact a corporation duly organized pursuant to Section 9 of the Stock Corporation Law;

2. To determine whether the securities required by the plan of reorganization are in excess of those of the company to whose property and franchises the applicant has succeeded. *Matter of Adirondack Electric Power Corporation* (1912), 3 P. S. C. R. (2d. Dist.) 242.

Effect of section 55a of the Public Service Commissions Law upon sections 9 and 10 of the Stock Corporation Law. *People ex rel. D. D., etc., R. R. Co. v. Pub. Serv. Comm.* (1915), 167 App. Div. 286, 153 N. Y. Supp. 344.

Liability on contractual obligations of predecessor.—The provision that upon reorganization of a corporation, upon the sale of the corporate property and franchises to a successor corporation, "such corporations shall be vested with and be entitled to exercise and enjoy all the rights, privileges and franchises which at the time of such sale belonged to or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation," relates only to obligations imposed by law and is not broad enough to impose upon a corporation contractual obligations of its predecessor which it never assumed. *Seventy-Eighth Street and Broadway Co. v. Purcell Mfg. Co.* (1915), 92 Misc. 178, 155 N. Y. Supp. 259, *affd.* (1916), 173 App. Div. 887, 157 N. Y. Supp. 1145.

Reorganization of insolvent company.—The formation of a new corporation to take the property of an insolvent corporation sold at a foreclosure sale is not a reorganization of the insolvent company within the meaning of the statute. *People ex rel. W. S. R. R. Co. v. P. S. Comm.* (1914), 210 N. Y. 456, 104 N. E. 952.

Rights of stockholders.—See *Vatable v. N. Y., L. E. & W. R. R. Co.* (1884), 96 N. Y. 49.

§ 10. Contents of plan or agreement.—At or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees, stockholders, or any of them, of the corporation owning such property and franchises at the time of the sale, and of holders of claims for materials, supplies and equipment furnished, and for injuries and damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said corporation, and for

the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders, and owners of any or all of the bonds of the corporation, foreclosed, or of the bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the state and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation or any claims for materials, supplies and equipment furnished, or any claims for injuries and damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said corporation, upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the certificate of incorporation. (*Amended by L. 1911, ch. 858, in effect July 29, 1911.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 4, as re-enacted by L. 1892, ch. 688, and amended by L. 1901, ch. 354.

The amendment of 1901 to the former law required provision to be made for creditors, mortgagees and stockholders, or any of them. The prior law required provision to be made for the "mortgage" creditors and the stockholders. The amendment also struck out a provision that the plan or agreement "must" contain provisions for the bondholders voting by proxy. L. 1901, ch. 354, § 5, saved rights pending when the amendment of 1901 took effect.

Plan of reorganization.—The plan of reorganization of corporations under this section may provide for the assumption of the indebtedness of the old company by the new. Where the articles of incorporation of a company show that it was planned pursuant to a previous agreement or plan to reorganize and purchase assets sold under foreclosure of another company, and issue stock for various purposes, among which the assumption of the debts or obligations of the former company was not included, is not conclusive as to the terms of such agreement and does not control the determination of the question as to whether the corporation assumed certain obligations of the former company. *Klein v. East River Electric Light Co.* (1904), 90 App. Div. 92, 86 N. Y. Supp. 164, revd. (1905), 182 N. Y. 27, 74 N. E. 495.

See notes to previous section.

§ 11. **Sale of property; possession of receiver and suits against him.**—The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust

foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on wilful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

Source.—Former Stock Corp. L. (L. 1892, ch. 564) § 5, as re-enacted by L. 1892, ch. 688.

References.—Appointment of receiver in action to foreclose corporate mortgage, General Corporation Law, §§ 306, 308. Receivers of corporations, generally, *Id.* §§ 230–278. See notes to section 9.

§ 12. Municipalities may assent to plan of readjustment.—The commissioners, corporate authorities or proper officers of any city, town or village, who may hold stock in any corporation, the property and franchises whereof shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

Source.—Former Stock Corp. L. (L. 1892, ch. 564) § 6, as amended by L. 1892, ch. 688, and L. 1901, ch. 354.

The amendment of 1901 struck out a clause which gave to every stockholder a right to assent to a plan of reorganization, and obtain the benefits thereof within six months after the organization of the new corporation. See L. 1901, ch. 354, § 5, which saved rights pending when amendment of 1901 took effect.

See *Vatable v. N. Y., L. E. & W. R. R. Co.* (1884), 96 N. Y. 49.

§ 13. Change of place of business.—Any stock corporation now existing or hereafter organized under the laws of this state, except moneyed corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or to which it may have been changed under the provisions of this section, to any other city, town or county in this state, in which it may desire to actually transact and carry on its regular business from day to day, provided

that such change has been authorized, either by unanimous consent of the stockholders expressed in writing and duly acknowledged and filed in the office of the secretary of state, by a vote of the stockholders of said corporation at a special meeting of the stockholders called for that purpose, or such change has been effected by an act of legislature creating a separate and distinct county wholly within the limits and boundaries of a then existing county or counties. When such change shall be authorized by the stockholders or effected by the creation of a new county wholly within the limits and boundaries of the then existing county or counties as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the secretary of state and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate. (*Amended by L. 1915, ch. 117.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 59, as added by L. 1896, ch. 929, and amended by L. 1905, ch. 489.

Consolidators' note.—Section 59 has been transferred to article 2, where it properly belongs, because relating to general powers.

A violation of the provisions of this section is no defense to an action by a corporation to enjoin defendants from divulging secret formulae. *Kern Hose Remedy Co. v. Selner* (1916), 172 App. Div. 152, 158 N. Y. Supp. 192.

§ 14. Combinations prohibited.—No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 7, as amended by L. 1892, ch. 688, and L. 1897, ch. 384.

References.—Anti-Monopoly Law. See General Business Law, §§ 340–346, and cases cited.

Monopoly defined.—*Continental Securities Co. v. Interborough R. T. Co.* (1908), 165 Fed. 451.

Combination agreements considered.—Right to use terminal facilities. *Alexandria Bay Steamboat Co. v. N. Y. C. & H. R. R. Co.* (1897), 18 App. Div. 527, 45 N. Y. Supp. 1091. Control of prices. *People v. Milk Exchange* (1892), 133 N. Y. 565, 30

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N. E. 850; *People v. Milk Exchange* (1895), 145 N. Y. 267, 39 N. E. 1062, 27 L. R. A. 437; *Leonard v. Poole* (1889), 114 N. Y. 371, 21 N. E. 707, 4 L. R. A. 728. Partnership. *People v. North River Sugar Refining Co.* (1890), 121 N. Y. 582, 24 N. E. 834, 9 L. R. A. 33. To manufacture all articles invented by patentee. *Good v. Daland* (1890), 121 N. Y. 1, 24 N. E. 15. To prevent ruinous competition. *U. S. Vinegar Co. v. Foehrenbach* (1895), 148 N. Y. 58, 42 N. E. 403; *Oakes v. Cattaraugus Water Co.* (1894), 143 N. Y. 430, 38 N. E. 461, 26 L. R. A. 544; *Leslie v. Lorillard* (1888), 110 N. Y. 519, 18 N. E. 363, 1 L. R. A. 456. Agreement that trustee shall purchase railroad equipment and lease it under contract of conditional sale. *Venner v. New York Central & H. R. R. Co.* (1914), 160 App. Div. 127, 145 N. Y. Supp. 725, *affd.* (1916), 217 N. Y. 615, 111 N. E. 487.

It is *ultra vires* for a corporation to purchase the stock of other corporations to avoid competition and control their management; and the prohibition of the statute is a good defense in an action on a contract for such a purchase. *De la Vergne Co. v. German Savings Institution* (1899), 175 U. S. 40, 44 L. ed. 65, 20 Sup. Ct. 20.

The consolidation of lighting companies into a single corporation does not create a monopoly, for it gains thereby no exclusive right; the field is still open to any other company that can obtain the necessary consent from the constituted authorities, and neither the production nor the price can be arbitrarily fixed by the consolidated company. *Matter of Attorney-General* (1908), 124 App. Div. 401, 405, 108 N. Y. Supp. 823.

Merger of street railroads is not prevented by this section for the legislature by various enactments upheld by the courts has expressly authorized the merger of such corporations under certain conditions. *Matter of Interborough Met. Co.* (1908), 125 App. Div. 804, 110 N. Y. Supp. 186. But see the following Federal cases, *contra*: *Burrows v. Interborough Metropolitan Co.* (1907), 156 Fed. 389; *Continental Securities Co. v. Interborough R. T. Co.* (1908), 165 Fed. 945.

Power of court to revoke license to do business in an action by the People against a foreign corporation for a violation of the statutes prohibiting monopolies in restraint of trade. *People v. American Ice Co.* (1909), 135 App. Div. 180, 120 N. Y. Supp. 41.

§ 15. **Merger.**—Any domestic stock corporation and any foreign stock corporation authorized to do business in this state lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 58, as added by L. 1896, ch. 932, and amended by L. 1900, ch. 475, and L. 1902, ch. 98.

References.—Monopolies not authorized, § 14, ante, and General Business Law, §§ 340-346.

Consolidators' note.—Section 58 has been placed in article 2, because it is a general provision. The heading is new.

History and construction.—*Irvine v. New York Edison Co.* (1913), 207 N. Y. 425, 101 N. E. 358.

Rights and remedies of a creditor of one corporation which has been merged in and with another. *Id.*

Conflict with Banking Law.—It seems that this section conflicts with section 36 of the Banking Law, so far as moneyed corporations are concerned. *Rept. of Atty.-Genl.* (1913), 20.

Filing certificate.—A certificate providing for the merger of a corporation, organized under the Railroad Law, with an electric light and railroad company, organized under the Transportation Corporations Law, should not be filed with the Secretary of State. *Rept. of Atty. Genl.* (1912) 33.

§ 16. **Voluntary sale of franchise and property.**—A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the state of New York, may with the consent of the holders of ninety-five per centum of its capital stock, sell and convey its property situate without the state of New York, not including its franchises, to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property and franchises thereby transferred, and in case of a sale to a foreign corporation the property sold, in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 33, in part, as added by L. 1893, ch. 638, and amended by L. 1901, ch. 130.

L. 1901, ch. 130, § 2.—This act shall take effect immediately, but shall not affect any action or proceeding commenced before this act shall take effect.

The amendment of 1901 inserts the provision authorizing the transfer of property to a foreign corporation.

Consolidators' note.—Section 33 has been transferred to article 2, as it is a general provision. It has been divided into two sections so that its provisions will stand out in plain view. The word "Voluntary" has been added to heading to distinguish it from sale under mortgage or judgment provided for by § 11 (former § 5).

Fraudulent sale.—Where the majority of the stockholders of a corporation who

are also its officers and directors, organize and become the officers, directors and stockholders of another corporation, and then sell all of the property of the former to the latter at a grossly inadequate price, such conduct constitutes a fraud upon the vendor corporation which will entitle that corporation, or a minority stockholder thereof suing in its right, to relief in equity. *Hinds v. Fishkill & Matteawan Gas Co.* (1904), 96 App. Div. 14, 88 N. Y. Supp. 954.

See *Holmes & Griggs Mfg. Co. v. Holmes & Wessell Metal Co.* (1891), 127 N. Y. 252, 27 N. E. 831; *People v. Ballard* (1892), 134 N. Y. 269, 294, 32 N. E. 54, cases decided prior to the addition of the above section in 1893.

Sale of the calendar department of a lithographing and printing company, organized under the Business Corporation Law, for the reason that the corporation lacked capital to carry on this department, is not a transaction within the ordinary course of business of the corporation, and is valid only when made in compliance with this section. *Matter of Timmis* (1910), 200 N. Y. 177, 93 N. E. 522, affg. (1893), 139 App. Div. 936, 124 N. Y. Supp. 438.

A trust company may purchase the assets of another trust company in accordance with the provisions of the Stock Corporation Law. *Opinion of Atty. Genl.* (1913) 20.

Liability of directors.—Directors who sell and transfer the assets of their company without taking the steps provided by this section and the General Corporation Law cannot relieve themselves from personal liability to a judgment creditor of the company by alleging that a fund was placed in trust for the payment of all debts at the time of the transfer, and that plaintiff, by failing to present his claims, lost his rights. *Shalek v. Jetter* (1915), 171 App. Div. 364, 155 N. Y. Supp. 975.

Certificate of incorporation; improper provisions.—A certificate incorporating a business corporation which provides that the directors may, with the consent of the holders of two-thirds of the capital stock issued and outstanding, dispose of the whole property of the corporation, not including franchises, to any corporation, domestic or foreign, is contrary to this section; and the secretary of state cannot be compelled to file such a certificate. Such a provision is not authorized by § 2 of the Business Corporations Law. *People ex rel. Barney v. Whalen* (1907), 119 App. Div. 749, 104 N. Y. Supp. 555, affd. (1907), 189 N. Y. 560, 82 N. E. 1131.

§ 17. **Rights of non-consenting stockholders on voluntary sale of franchise and property.**—If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter, object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value

of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 33, in part, as added by L. 1893, ch. 638, and amended by L. 1901, ch. 130.

Consolidators' note.—This section is part of § 33, made into a new section without change, except heading is added, as explained in note last preceding section.

Application of section.—*Matter of Timmis* (1910), 200 N. Y. 177, 93 N. E. 522, *affg.* (1893), 139 App. Div. 936, 124 N. Y. Supp. 438.

Where the property of a telephone company has been sold in compliance with section 104 of the Transportation Corporations Law, a stockholder who did not consent to such sale is not entitled to have appraisers appointed for the purpose of ascertaining the value of her stock under this section. *Matter of Bronson* (1917), 177 App. Div. 374, 164 N. Y. Supp. 179.

Conflict with Transportation Corporations Law.—As this section conflicts with section 104 of the Transportation Corporations Law, the latter, under section 321 of the General Corporation Law, must prevail. *Matter of Bronson* (1917), 177 App. Div. 374, 164 N. Y. Supp. 179.

Necessity of application for appraisal.—Where the sale, which plaintiff opposed, took place before the statute giving the right to an appraisal took effect, plaintiff cannot be charged under said statute in an action for an accounting. *Logan v. New York Sugar Refining Co.* (1917), 176 App. Div. 660, 163 N. Y. Supp. 214.

The notice of application for an appraisal should be served within sixty days, but the hearing may be had after that period has expired. *Matter of Ennis v. Federal Brewing Co.* (1908), 123 App. Div. 691, 108 N. Y. Supp. 230, *affd.* (1908), 192 N. Y. 570, 85 N. E. 1109.

Section cited.—*Lazenby v. International Cotton Mills Co.* (1916), 174 App. Div. 906, 160 N. Y. Supp. 1.

§ 18. Alterations or extension of business.—Any stock corporation heretofore or hereafter organized under any general or special law of this state may alter its certificate of incorporation so as to include therein any purposes, powers or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this state for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by a vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

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Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 32, as added by L. 1892, ch. 688, and amended by L. 1901, ch. 354, and L. 1905, ch. 751.

The amendment of 1901 of the former law provided that a corporation may alter its certificate so as to include therein any purposes, powers "or provisions," which at the time of such alteration may apply to corporations engaged in a business of the same general character, etc. The former law authorizing the corporation to "extend or alter its business and powers," so as to include therein any "purposes and powers" which may have been conferred by law on corporations engaged in business of the same general character, etc. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

The amendment of 1905 authorized the president or secretary instead of "a majority of its directors" to execute the certificate, and also required the certificate to state that it had been duly authorized by a vote of a majority of the directors as well as by a vote of stockholders.

Consolidators' note.—Section 32 has been transferred to article 2, because it is a general provision.

Construed together with section 7 of the Membership Corporations Law. Matter of Creditors' Audit Adjustment Assn. (1911), 72 Misc. 461, 131 N. Y. Supp. 263.

Amendment, when allowed, see Rept. of Atty. Genl. (1911) 24.

This section does not provide for an amendment of the certificate of incorporation by consent of the stockholders. *Bond v. Atlantic Terra Cotta Co.* (1910), 137 App. Div. 671, 676, 122 N. Y. Supp. 425.

An amended certificate of incorporation for the purpose of changing voting rights should not be accepted by the secretary of State, where it shows that only the vote required by this section has been obtained; *contra*, where it is shown that all the stockholders have voted in favor of the amendment. Rept. of Atty. Genl. (1910) 414.

A title guaranty and indemnity company cannot amend its charter so as to eliminate therefrom insurance powers. Rept. of Atty. Genl. (1909) 788.

Exchange of stock authorized by § 52 is an additional power, which may be acquired. *People ex rel. Municipal Gas Co. v. Rice* (1893), 138 N. Y. 151, 38 N. E. 846, in which case the section is fully considered.

§ 19. Issuance of shares of stock without nominal or par value.—Upon the formation or the reorganization of any stock corporation, other than a moneyed corporation, and other than a corporation under the jurisdiction of any public service commission, the certificate of incorporation may provide for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value, by stating in such certificate:

1. The number of shares that may be issued by the corporation, and if any of such shares be preferred stock, the preferences thereof. If such preferred stock or any part thereof shall have a preference as to principal, the certificate shall state the amount of such preferred stock having such preference, the particular character of such preferences, and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars.

2. The amount of capital with which the corporation will carry on business, which amount shall be not less than the amount of preferred stock (if any) authorized to be issued with a preference as to principal, and in addition thereto a sum equivalent to five dollars or to some multiple

of five dollars for every share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than five hundred dollars.

Such statements in the certificates shall be in lieu of any statements prescribed by law under which the corporation shall have been formed or reorganized as to the amount or the maximum amount of its capital stock or the number of shares into which the same shall be divided, or of the amount or the par value of such shares.

Each share of such stock without nominal or par value shall be equal to every other share of such stock, subject to the preferences given to the preferred stock if any authorized to be issued. Every certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of such shares. The certificates for preferred shares having a preference as to principal shall state briefly the amount which the holders of each of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the corporation in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares.

Such corporation may issue and may sell its authorized shares, from time to time, for such consideration as may be prescribed in the certificate of incorporation, or for such consideration as shall be the fair market value of such shares, and, in the absence of fraud in the transaction, the judgment of the board of directors as to such value shall be conclusive; or for such consideration as shall be consented to by the holders of two-thirds of each class of shares then outstanding at a meeting called for that purpose in such manner as shall be prescribed by the by-laws. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof. (*Added by L. 1912, ch. 351, and amended by L. 1917, ch. 500, in effect May 15, 1917.*)

References.—Issue and transfer of stock, generally, §§ 50, 51, post. Change in par value of shares, § 65, post. Certificate of incorporation of corporations, generally, to state amount of capital stock, number of shares and par value, *Business Corporations Law*, § 2. Fraudulent issue of stock, *Penal Law*, § 662.

§ 20. **Commencement of business; authorized debts.**—No corporation formed pursuant to section nineteen hereof shall begin to carry on business or shall incur any debts until the amount of capital stated in its certificate of incorporation shall have been fully paid in money, or in property taken at its actual value. In case the amount of capital stated in its certificate of incorporation shall be increased as herein provided, such corporation shall not increase the amount of its indebtedness then existing until it shall have received in money or property the amount of such increase of its stated

capital. The directors of the corporation assenting to the creation of any debt in violation of this section shall be liable jointly and severally for such debt; but no action shall be brought under the foregoing provision of this section unless within one year after the debt shall have been incurred the creditors shall have served upon the director written notice of intention to hold him personally liable for such debt. Any director who, because of any such liability under this section, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporation and its property and also shall be entitled to contribution from all other directors of the corporation similarly liable for the same debt and the personal representative of any such director who shall have died before making such contribution.

No such corporation shall declare any dividend which shall reduce the amount of its capital below the amount stated in the certificate as the amount of capital with which the corporation will carry on business. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the time or who were not present when such action was taken, shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend. (*Added by L. 1912, ch 351.*)

References.—Liability of directors for unauthorized dividends, § 28, post; penal liability for such dividends, Penal Law, §§ 664, 667. Actions to enforce liability of officers and stockholders, General Corporation Law, §§ 100–116.

See *Brooklyn Heights R. R. Co. v. Brooklyn City R. R. Co.* (1912), 151 App. Div. 465, 477, 135 N. Y. Supp. 990.

§ 21. **Taxation.**—The organization tax payable under section one hundred and eighty of the tax law by any corporation issuing such shares without designated monetary value shall be at the rate of five cents on each such share which the corporation is authorized to issue, and a like tax upon any subsequent increase thereof. The tax payable under section two hundred and seventy of the tax law in respect of any sale or agreement of sale or any memorandum of sale or delivery or transfers of shares or certificates of any share without designated monetary value hereafter issued by any such corporation issuing such shares shall be at the rate of two cents for each and every share of such stock so transferred. The franchise tax upon any corporation issuing such shares of stock payable under section one hundred and eighty-two of the tax law shall be determined by taking as a base such portion of the net assets of the corporation as its gross assets employed in any business within this state bear to its entire gross assets wherever employed in business, and the rate of such franchise tax shall be fixed in the manner provided in said section one hundred and eighty-two of the tax law. For this purpose the rate of dividends shall be computed

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by dividing the total amount of dividends which has been paid during the year by the amount of the net assets of the corporation upon the first day of such year. (*Added by L. 1912, ch. 351, and amended by L. 1917, ch. 501, in effect May 15, 1917.*)

Application.—Sales or transfers of corporate stock without any nominal or par value are, by virtue of the provisions of this section, taxable at the rate of two cents for each and every share of stock so transferred, but this provision does not relate or apply to the transfer of stock of a point stock association. Rept. of Atty. Genl. (1912) 525.

The provisions of section 180 of the Tax Law, that the organization tax upon corporations shall not in any case be less than five dollars, is applicable to corporations having shares of corporate stock without nominal or par value. Rept. of Atty. Genl. (1912) 291.

§ 22. Increase or reduction of shares or capital.—Any corporation formed or reorganized pursuant to section nineteen may amend its certificate of incorporation so as to increase or to reduce the number of shares which it may issue, or so as to increase or to reduce the amount of its stated capital by filing in the manner provided for the original certificate of incorporation, a certificate of amendment under seal executed by its president or a vice-president and by its secretary or its treasurer, stating the amendment proposed and that the same has been duly authorized by a vote of a majority of the directors and also by the vote of the holders of at least three-fifths of the outstanding shares of each class issued by the corporation, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three hereof, and by filing with such certificate of amendment a copy of the proceedings of such meeting, made, signed, verified and acknowledged by the president or a vice-president and by the secretary or the treasurer of the corporation; but an amendment cannot be made under this section unless as so amended the certificate of incorporation could lawfully have been filed under section nineteen of this chapter. In case of a reduction of the amount of capital of a corporation, a certificate setting forth the whole amount of the ascertained debts and liabilities of the corporation shall be made, signed, verified and acknowledged by the president or a vice-president and by the secretary or the treasurer of the corporation and shall be filed with the certificate of amendment; and such certificate of amendment shall have endorsed thereon the approval of the comptroller to the effect that as so stated the reduced amount of capital is sufficient for the proper purposes of the corporation and is in excess of its ascertained debts and liabilities. (*Added by L. 1912, ch. 351.*)

References.—Increase or reduction of capital stock of corporations, generally, §§ 62–64, post.

§ 23. Amount of capital stock and of shares within meaning of other laws.—For the purpose of any rule of law or of any statutory provision (other than the foregoing sections nineteen, twenty, twenty-one and twenty-two) relating to the amount of the capital stock of a corporation or the amount or par value of its shares, the aggregate amount of

the capital stock of any such corporation formed pursuant to section nineteen hereof shall be deemed to be the aggregate amount specified in the certificate or amended certificate of incorporation or of reorganization as the amount of capital with which the corporation will carry on business; the amount or the par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount thereof so specified in such certificate or such amended certificate; and the amount or the par value of each other share shall be deemed to be an aliquot part of the aggregate capital so specified in such certificate or in such amended certificate in excess of the specified amount (if any) of the preferred stock therein authorized to be issued with a preference as to principal. (*Added by L. 1912, ch. 351.*)

§ 24. **Certificate of reorganization.**—Any stock corporation heretofore or hereafter organized under any general law, other than a corporation belonging to one of the classes specifically excepted by section nineteen of this chapter, may be reorganized so that such corporation, its officers, directors and stockholders, shall acquire and enjoy all the rights, privileges, powers and exemptions, and become subject to all of the liabilities and obligations imposed by sections nineteen to twenty-three, inclusive, of this chapter, upon the filing and recording, pursuant to section five of the general corporation law, of a certificate, which shall be entitled and endorsed “Certificate of reorganization of pursuant to section twenty-four of the stock corporation law.” (the blank space being filled in with the name of the corporation) and which certificate shall state:

1. The name under which the corporation was originally organized, and if it has been changed, the present corporate title.

2. The law under which the corporation was organized, by year of passage, chapter number, and article if any.

3. The date on which, and the public office or offices in which its certificate of incorporation was filed.

4. The amount of capital stock authorized by its certificate of incorporation, and if that amount has been changed, the date of filing of each certificate or consent authorizing a change, and the amount to which the capital stock was increased or reduced by each such certificate or consent.

5. The amount of each payment of taxes for the privilege of organizing or of increasing the capital stock of the corporation.

6. The number of shares into which the capital stock has been divided, and, if classified, the number and par value of the shares included in each class together with the preferences or distinctive features of the shares of each class.

7. The number of shares of each class issued and outstanding.

8. The number of shares that may henceforth be issued by the corporation, which may be either less than, or equal to or in excess of the number of shares into which the capital stock was previously divided, and all of the matters and things required to be stated in an original certificate

of incorporation by subdivision one of section nineteen of this chapter.

9. If any of the new shares are to be preferred, the number of shares to be included in each class and the preferences thereof, which preferences must be such as are authorized by law at the time of reorganization.

10. The amount of capital with which the corporation will carry on business, which shall be in all respects as required by subdivision two of section nineteen of this chapter.

11. The terms upon which the new shares of the reorganized corporation shall be issued in place of the outstanding shares of stock.

12. It may also prescribe the consideration for which the reorganized corporation may issue and sell its authorized shares, or it may authorize the board of directors to issue and sell its authorized shares from time to time, for such consideration, as shall be the fair market value of said shares, and, in the absence of fraud in the transaction, the judgment of the board of directors as to such value shall be conclusive.

Nothing shall be included in such certificate other than as authorized by this section, and it shall be either:

(a) Signed and acknowledged by every stockholder of record of the corporation, or his duly authorized proxy, and shall have annexed an affidavit of the custodian of the stock book to the effect that the persons who have executed the certificate, in person or by proxy, constitute the holders of record of all of the shares of stock of the corporation, irrespective of class, issued and outstanding, or;

(b) Signed and acknowledged by the president or a vice-president and the secretary or treasurer of the corporation, who shall make and annex an affidavit stating that they have been authorized and directed to execute and file the certificate by the votes, cast in person or by proxy, of the holders of record of two-thirds or more of each class of the outstanding shares of stock, irrespective of any provision of the certificate of incorporation purporting to deny voting powers to the holders of any class of stock, at a meeting called and held upon written notice mailed to each stockholder at least two weeks before the date set for the meeting and published once a week for at least two successive weeks in a newspaper published and circulating in the county wherein the principal office of the corporation is located; and that such notice did expressly state the purpose of the meeting to be that of reorganizing the corporation pursuant to section twenty-four of the stock corporation law, so as to permit the issuance of shares without par value, and did state the terms upon which the outstanding shares of stock were to be exchanged for the new shares. (*Added by L. 1917, ch. 484, in effect May 15, 1917.*)

Reference.—Reorganization of existing business corporations, Business Corporations Law, § 3.

§ 24-a. Comptroller's approval of reduction of capital.—If the amount of capital stated in the certificate of reorganization as that with which the corporation will carry on business, be less than the total amount of

the par value of the previously issued and outstanding capital stock, there shall be annexed to such certificate an affidavit of the president or a vice-president and the secretary or treasurer of the corporation, setting forth the whole amount of the ascertained debts and liabilities of the corporation; and, in such case, the certificate of reorganization shall have endorsed thereon the approval of the comptroller to the effect that the amount of capital stated in the certificate as that with which the corporation will carry on business is sufficient for the proper purposes of the corporation and is in excess of its debts and liabilities. (*Added by L. 1917, ch. 484, in effect May 15, 1917.*)

§ 24-b. Restriction upon incurring of debts.—No corporation reorganized under section twenty-four of this chapter shall incur any debts subsequent to the filing of the certificate of reorganization until it shall have assets of an actual value at least equal to the amount of capital stated in its certificate of reorganization as that with which it will carry on business. The directors of a corporation assenting to the creation of a debt in violation of this section shall be jointly and severally liable for such debt in like manner as provided, and subject to the conditions and limitations imposed by section twenty of this chapter. (*Added by L. 1917, ch. 484, in effect May 15, 1917.*)

§ 24-c. Liability upon existing obligations.—The liability of the corporation, its officers, directors and stockholders for corporate debts contracted or obligations incurred prior to the filing of the certificate of reorganization pursuant to section twenty-four of this chapter shall be unaffected thereby, but for the purpose of enforcing and recovering upon such claims creditors shall have the same right of recourse against the corporation, or against its officers, directors and stockholders individually that they would have had if the corporation had not been reorganized, and there shall be especially reserved and saved to such creditors all of the rights and benefits conferred by sections fifty-six to fifty-nine, inclusive, of this chapter, subject to the conditions, limitations and restrictions imposed by those sections.

Except as provided by this section the new shares issued by the reorganized corporation shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof. (*Added by L. 1917, ch. 484, in effect May 15, 1917.*)

§ 24-d. Not to be construed as dissolution or re-incorporation.—No proceedings taken under section twenty-four of this chapter shall be deemed to work a dissolution, or to create a new corporation or to interrupt in any way the continuity of existence of the corporation affected. (*Added by L. 1917, ch. 484, in effect May 15, 1917.*)

§ 24-e. Reorganization tax.—Every corporation reorganized pursuant

to section twenty-four of this chapter shall pay to the state treasurer for the privilege of such reorganization a tax of the same amount, and computed in like manner as upon the organization of a new corporation, authorized to issue shares of the same number and kinds as the reorganized corporation, less one-half of the aggregate amount of all sums previously paid for the privilege of organizing or of increasing the capital stock; provided, however, that every corporation so reorganized shall pay a tax for the privilege of such reorganization, which in no case shall be less than twenty-five dollars. Neither the secretary of state nor the county clerk shall file any certificate of reorganization under section twenty-four of this chapter until he is furnished with a receipt for such tax from the state treasurer. (*Added by L. 1917, ch. 484, in effect May 15, 1917.*)

ARTICLE III.

DIRECTORS AND OFFICERS.

Section 25. Directors.

26. Change of number of directors.
27. When acts of directors void.
28. Liability of directors for making unauthorized dividends.
29. Liability of directors for loans to stockholders.
30. Officers.
31. Inspectors and their oath.
32. Books to be kept.
33. Stock books of foreign corporations.
34. Annual report to secretary of state.
35. Liability of officers for false certificates, reports or public notices.

§ 25. Directors.—The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policyholders of an insurance corporation shall be eligible to election as directors, whether or not they be stockholders. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 20, as amended by L. 1892, ch. 688; L. 1901, ch. 354, and L. 1906, ch. 238.

The amendment of 1901 to the former law struck out the requirement that a director shall be a stockholder, and also the provision that if a director shall cease to be a stockholder his office shall become vacant, and substitutes the provision that a

director shall be a stockholder unless otherwise provided in the certificate or by by-law. Supersedes the cases of *Chemical Nat. Bank v. Colwell* (1892), 132 N. Y. 250, 30 N. E. 644, and *Sinclair v. Fuller* (1899), 158 N. Y. 607, 53 N. E. 510, holding that the office of director became *ipso facto* vacant on his ceasing to be a stockholder. See L. 1901, ch. 354, § 5, which saved rights pending when amendment of 1901 took effect.

The amendment of 1906 provided that policyholders shall be eligible *whether or not they be stockholders*.

References.—"Directors" include trustees or managers, General Corporation Law, § 3, subd. 6. One must be a resident, Id. § 34. Quorum, Id. §§ 34, 43. May make by-laws, Id. § 34. By-laws regulating election to be published, Id. § 11, subd. 5. Conduct of election, Id. §§ 23-32; Stock Corporation Law, § 31. Failure to make by-laws providing for election, § 27, post. Change in number, § 26, post. Unauthorized dividends, 28, post. Loans to stockholders, § 29, post. May appoint officers, § 30, post. False certificates and report, § 35, post. Penal liability, Penal Law, §§ 664, 665, 667, 668. Actions against, General Corporation Law, §§ 90-115.

Presumption that director continues to hold office after parting with stock.—As by virtue of this section a person not a stockholder may be a director if a provision to that effect is made by the corporation charter or by-laws, it will be presumed that a person elected director and president continues to hold office in the absence of proof that he has resigned or that his successor has been elected, even though he has parted with all his stock. Hence, in the absence of proof to the contrary, he has *prima facie* authority to institute an action on behalf of the corporation pursuant to a resolution authorizing him to do so. *Buffalo Electro-Plating Co. v. Day* (1912), 151 App. Div. 237, 135 N. Y. Supp. 1054.

Powers and duties of directors.—See General Corporation Law, § 34, cases cited, and § 30, post.

Election of directors.—May be ordered by court. *Matter of Lighthall Mfg. Co.* (1888), 47 Hun 258. Statutory notice sufficient, in absence of by-law. *Matter of David Jones Co.* (1893), 67 Hun 360, 22 N. Y. Supp. 318.

General notice of meeting sufficient.—*Matter of Argus Co.* (1893), 138 N. Y. 557, 34 N. E. 388.

Notice of special meeting to elect directors.—When a special meeting is called for the election of directors, the notice required by this section together with that prescribed by the by-laws must be given. If the by-laws require thirty days' notice, a notice of twelve days is insufficient and entitles a stockholder who has not appeared to waive his rights to an order vacating the election. The fact that a vote on the stock owned by the stockholders would never change the result is immaterial. *Matter of Keller* (1906), 116 App. Div. 58, 101 N. Y. Supp. 133.

Waiver of notice.—Where the requirement as to the publication of notice was disregarded in an election of directors but said notice was served on all stockholders personally or by mail and the meeting was in every other respect legal, a waiver signed by each stockholder approving the vote taken pursuant to section 42 of the General Corporation Law renders such election valid. *Rept. of Atty. Genl.* (1910) 823.

Election at adjourned meeting.—An adjourned meeting is but a continuation of the meeting adjourned and the by-laws do not exceed the statute when so providing; hence, directors may be elected at an adjourned meeting without further notice by publication. *In re Hammond* (1905), 139 Fed. 898.

Meeting for election of directors; quorum.—That only a minority of the stock of the corporation is voted on at an election of directors does not make the election illegal; the stockholders attending or represented make a quorum. *Ashcroft v.*

Hammond (1909), 132 App. Div. 3, 116 N. Y. Supp. 362, *revd.* other grounds (1910), 1917 N. Y. 488, 90 N. E. 1117.

Holders of plurality of stock voting may choose directors. *Matter of Rapid Transit Ferry Co.* (1897), 15 App. Div. 530, 44 N. Y. Supp. 539.

Agreement to elect director upon consideration of his conducting affairs of corporation, so as to increase value of shares void. *Kountze v. Flannagan* (1892), 46 N. Y. St. Rep. 471, 19 N. Y. Supp. 33.

Agreement for election of directors, others than as provided by this section is invalid. *Reiss v. Levy* (1916), 175 App. Div. 938, 161 N. Y. Supp. 1408.

Acceptance of office necessary.—May be actual or implied. *Cameron v. Seaman* (1877), 69 N. Y. 396.

Holding over until successors are elected. *St. George Vineyard Co. v. Fritz* (1900), 48 App. Div. 233, 62 N. Y. Supp. 775.

Title to office cannot be conferred by recognition, if election was invalid. *People ex rel. Nicholl v. N. Y. Infant Asylum* (1890), 122 N. Y. 190, 25 N. E. 241, 10 L. R. A. 381.

Directors cannot vote by proxy.—*Craig Medicine Co. v. Merchants' Bank* (1891), 59 Hun 561, 14 N. Y. Supp. 16.

When directors must be stockholders.—Where the by-laws of a corporation require a director to be "the holder or owner of at least one share" of its stock and it appears that stock has been transferred prior to an election for the sole purpose of qualifying the transferees as directors, but that these shares had been immediately assigned back to the true owner in blank, their election to the office of director is invalid. *Matter of Ringler & Co.* (1912), 204 N. Y. 30, 97 N. E. 593, *revg.* (1911), 145 App. Div. 361, 130 N. Y. Supp. 62.

§ 26. **Change of number of directors.**—The number of directors of any stock corporation may be increased or reduced, but not below the minimum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified the unanimous consent of the stockholders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the custodian of the stock book of such corporation stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation

whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase. (*Thus amended by L. 1909, ch. 421.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 21, as amended by L. 1892, ch. 688; L. 1903, ch. 320; L. 1904, ch. 307, and L. 1905, ch. 750.

References.—Place of filing certificate, General Corporation Law, § 5. Election of additional directors, General Corporation Law, §§ 29–32.

Validity of provision of articles of incorporation of corporation as to change of number of directors.—A provision in the certificate of incorporation of a corporation organized under the Business Corporations Law, that "The number of its directors is to be four (4); said directors shall not be required to be stockholders of said corporation, and said number shall not be changed, except by the unanimous consent of all the stockholders of said corporation," is a valid and binding limitation on the power of the corporation and its members, authorized by section 10 of the General Corporation Law, and not in conflict with this section of the Stock Corporation Law; and an injunction, asked by the minority stockholders, was properly granted to restrain such increase in the number of directors. *Ripin v. U. S. Woven Label Co.* (1912), 205 N. Y. 442, 98 N. E. 855.

By-law which requires the vote of those holding a majority of the stock to effect a change in the number of directors, is inconsistent with this section and is, therefore, null and void. *Katz v. H. & H. Mfg. Co.* (1904), 109 App. Div. 49, 95 N. Y. Supp. 663, *affd.* (1906), 183 N. Y. 578, 76 N. E. 1098.

An agreement by stockholders not to increase or decrease the number of directors of a corporation is not binding on subsequent owners of the stock purchased in good faith and without notice. *Bond v. Atlantic Terra Cotta Co.* (1910), 137 App. Div. 671, 122 N. Y. Supp. 425.

Two methods for increasing or reducing the number of directors, see *Bond v. Atlantic Terra Cotta Co.* (1910), 137 App. Div. 671, 675, 122 N. Y. Supp. 425.

Legality of change can only be raised in direct proceeding by person whose interests are affected. *Wallace v. Walsh* (1890), 125 N. Y. 26, 25 N. E. 1076, 11 L. R. A. 166.

Transcript of minutes of stockholders' meeting must be filed in offices where certificates are filed. *Matter of Dolgeville El. Lt. & Power Co.* (1899), 160 N. Y. 500, 55 N. E. 287.

Taking effect of resolution.—A resolution to reduce a number of directors does not take effect until the date of filing in the proper office of the transcript of the proceedings of the meeting at which a resolution was adopted. *Matter of Westchester Trust Co.* (1906), 186 N. Y. 215, 78 N. E. 875, *revd.* (1906), 114 App. Div. 856, 100 N. Y. Supp. 249.

Increase in number of directors does not become effectual until a certificate thereof has been filed. *Lewis v. Matthews* (1914), 161 App. Div. 107, 146 N. Y. Supp. 424.

§§ 27, 28.

Directors and officers.

L. 1909, ch. 61.

Change in number of directors of an insurance corporation.—Whenever a domestic insurance corporation seeks to increase or reduce the number of its directors, it is immaterial whether the consent of the Superintendent of Insurance to such increase or reduction is obtained prior to the meeting and action of the stockholders held for such purpose. The requirement of the statute is satisfied so long as the consent of the Superintendent of Insurance is obtained, and the increase or reduction is not effective until such consent is given. Rept. of Atty. Genl. (1914) 32.

§ 27. When acts of directors void.—When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 22, as re-enacted by L. 1892, ch. 688.

§ 28. Liability of directors for making unauthorized dividends.—The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 23, as amended by L. 1892, ch. 688, and L. 1901, ch. 354.

The amendment of 1901 to the former law provided that directors should be liable "to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction" in substitution for the former law "to the full amount of the capital of such corporation so divided, withdrawn, paid out or reduced." The last clause was also added. See L. 1901, ch. 354, § 5, which saved rights pending when amendment of 1901 took effect.

References.—Penal liability for unauthorized dividends, Penal Law, §§ 664, 667. Removal or suspension of director, General Corporation Law, §§ 90-92.

Purpose.—To create a property capital for the corporation, and to keep that intact so as to secure the solvency of the corporation and its responsibility to its creditors. *Equitable Life Assur. Soc. v. Union Pacific R. R. Co.* (1914), 162 App. Div. 81, 89, 147 N. Y. Supp. 382, *affd.* (1914), 212 N. Y. 360, 106 N. E. 92.

Application to foreign corporations.—Directors of a foreign corporation, transacting business in this state and subjecting itself to the conditions established by our laws, may be charged with liability if they declare dividends from capital; and the corporation may maintain action to enforce the liability. *German-American Coffee Co. v. Diehl* (1915), 216 N. Y. 57, 109 N. E. 875, *revg.* (1915), 167 App. Div. 928, 152 N. Y. Supp. 1113, which was decided upon the opinion in *De Raismes v. U. S. Lithograph Co.* (1914), 161 App. Div. 781, 146 N. Y. Supp. 813.

"Capital stock."—Does not mean share stock, but the property of the corporation contributed by its stockholders or otherwise obtained by it to the extent required by its charter. *Equitable Life Assur. Soc. v. Union Pacific R. R. Co.* (1914), 162 App. Div. 81, 89, 147 N. Y. Supp. 382, *affd.* (1914), 212 N. Y. 360, 106 N. E. 92.

"Dividends."—Meaning of the term as used in this section and in section 182 of the Tax Law. *People ex rel. Ridgewood Land & Imp. Co. v. Laxe* (1916), 174 App. Div. 344, 349, 160 N. Y. Supp. 752, *affd.* (1916), 219 N. Y. 637, 114 N. E. 1080.

Right to dividends.—Accrues when made. *Hyatt v. Allen* (1874), 56 N. Y. 553; *Hill v. Newichawanick Co.* (1876), 8 Hun 459, *affd.* (1876), in 71 N. Y. 493; *Goldsmith v. Swift* (1881), 25 Hun 201. Transfer of stock carries all dividends subsequently declared. *Jones v. Terre Haute & Richmond R. R. Co.* (1874), 57 N. Y. 196; *Boardman v. L. S. & M. S. R. R. Co.* (1881), 84 N. Y. 157; *Prouty v. Same* (1881), 85 N. Y. 272; *Hopper v. Sage* (1889), 112 N. Y. 530, 20 N. E. 350. Pledgee entitled to dividends. *Hill v. Newichawanick Co.* (1874), 48 How. Pr. 427, *affd.* (1876), 8 Hun 459, *affd.* in (1877), 71 N. Y. 593. But see *Warner v. Watson* (1893), 4 Misc. 12, 23 N. Y. Supp. 922. Assignee has right to payment of unpaid dividends falling due before he acquired title to stock. *Jermain v. L. S. & M. S. R. R. Co.* (1883), 91 N. Y. 483. Company's books best evidence of right to dividends. *Brisbane v. Del., L. & W. R. R. Co.* (1881), 25 Hun 438, *affd.* (1883), 94 N. Y. 204.

Dividends from surplus in discretion of directors.—*Williams v. Western Union Tel. Co.* (1883), 93 N. Y. 162; *Beveridge v. N. Y. El. R. R. Co.* (1889), 112 N. Y. 1, 19 N. E. 489, 2 L. R. A. 648; *McNab v. McNab & Harling Mfg. Co.* (1891), 62 Hun 18, 16 N. Y. Supp. 448, *affd.* (1892), 133 N. Y. 687, 31 N. E. 627. But see *Hiscock v. Lacy* (1894), 9 Misc. 578, 30 N. Y. Supp. 860.

Stock dividends.—Lawful, if made from surplus. *Williams v. Western Union Tel. Co.* (1883), 93 N. Y. 162; *Berwind-White Coal Mining Co. v. Ewart* (1895), 11 Misc. 490, 32 N. Y. Supp. 716, *affd.* (1895), 90 Hun 60, 35 N. Y. Supp. 573; *Merz v. Interior Conduit & Insulation Co.* (1895), 87 Hun 430, 34 N. Y. Supp. 215. Stockholder cannot be compelled to take earnings in the form of capital stock. *Hatch v. Western Union Tel. Co.* (1881), 9 Abb. N. C. 430; *Williams v. Same* (1881), 9 Abb. N. C. 419.

Distribution of stock acquired from profits arising from sale of land by corporation.—See *People ex rel. Queens County Water Co. v. Travis* (1916), 171 App. Div. 521, 157 N. Y. Supp. 943, *affd.* (1916), 219 N. Y. 571, 114 N. E. 1079.

Nature of liability of directors.—*Dykeman v. Keeney* (1899), 16 App. Div. 131, 45 N. Y. Supp. 137, *affd.* (1899), 160 N. Y. 677, 50 N. E. 1090.

Extent of liability of directors.—*Johnson v. Nevins* (1914), 87 Misc. 430, 433, 150 N. Y. Supp. 828.

Ignorance of director as to financial standing of corporation is no defense when he has voted to declare a dividend from the capital instead of from the supposed

profits. *Weap v. Muckle* (1910), 136 App. Div. 241, 120 N. Y. Supp. 976, *affd.* (1911), 201 N. Y. 527, 94 N. E. 1100.

The directors of a dissolved corporation are jointly and severally liable to a judgment creditor for distributing the assets of such dissolved corporation to its other creditors without making provisions for the debt represented by the judgment. *Tapley Co. v. Keller* (1909), 133 App. Div. 54, 117 N. Y. Supp. 817.

Withdrawal of capital, see *Baldwin v. Bay Realty Co.* (1915), 169 App. Div. 941, 942, 153 N. Y. Supp. 886, *affd.* (1916), 219 N. Y. 652, 114 N. E. 1060.

Where two of the three directors transferred all of their stock to the third director to be paid for from the funds of the corporation, but such payment did not impair the capital stock and the assets remained more than sufficient to pay all liabilities, the two directors are not liable to creditors, although the corporation was subsequently dissolved. *Cullen v. Friedland* (1912), 152 App. Div. 124, 136 N. Y. Supp. 659.

It is no defense to a suit brought by a domestic corporation, organized to deal in groceries, to recover for goods furnished, to allege in substance that the defendant with others became members of a co-operative association through which they were to obtain domestic supplies at cost and expense of management, paying for the privilege twenty-five dollars, with the understanding that if they should withdraw from the association they should receive back that sum, or take the same out in trade. This, because it would be illegal for it to pay back sums contributed as capital. *McGill v. Underwood* (1914), 161 App. Div. 30, 146 N. Y. Supp. 362.

Where the corporate stock of a corporation was issued in consideration of the assignment to the corporation of patent rights, a contract by the company to assign to a stockholder certain of such patent rights in a stipulated territory in return for which the stockholder agrees to turn over his stock to the corporation and resign as an officer of the company is in violation of this section. *Stevens v. Olus Mfg. Co.* (1911), 72 Misc. 508, 130 N. Y. Supp. 22, *affd.* (1911), 146 App. Div. 951, 131 N. Y. Supp. 1145.

Gift to stockholder.—A corporation while a going concern, incurring debts and liabilities, cannot give to a stockholder and director thereof, for the benefit of another stockholder, a part of the capital. *Hazard v. Wight* (1911), 201 N. Y. 399, 94 N. E. 855, *revg.* (1910), 138 App. Div. 441, 122 N. Y. Supp. 837.

See generally *Cottrell v. Albany Card & Paper Mfg. Co.* (1911), 142 App. Div. 148, 126 N. Y. Supp. 1070.

Legality of purchase of its own stock by a corporation.—In the absence of prohibition by statute, a corporation may purchase its own stock, hold it non-extinguished and re-issue the same. By this section it is expressly provided that a corporation may accept and receive its own stock in payment of debts deemed bad or doubtful by its directors. The stock so received is not cancelled but returned to the treasurer for sale to others. And no inference may be drawn from this provision that a corporation may not purchase its own stock. *Moses v. Soule* (1909), 63 Misc. 203, 118 N. Y. Supp. 410, *affd.* (1909), 136 App. Div. 904, 120 N. Y. Supp. 1136.

Does not forbid a corporation purchasing shares of its own stock held by its directors, especially if the transaction be in the interest of the corporation and not of the selling directors; the purchase of the stock of the corporation by the corporation from the stockholders is not prohibited, though payment therefor from the capital may be and possibly is; hence, a contract by the corporation to purchase its own stock is not void. *In re Castle Co.* (1906), 145 Fed. 224.

Undeclared dividends cannot be separately assigned. *Manning v. Quicksilver Mining Co.* (1881), 24 Hun 360, *revd.* (1883), 91 N. Y. 495.

Action to recover dividend is inconsistent with action against corporation for conversion of stock. *Hughes v. Vermont Copper Mining Co.* (1878), 72 N. Y. 207.

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Cannot be maintained by one stockholder against another. *Peckham v. Van Wagenen* (1880), 83 N. Y. 40.

Survival of action for illegal declaration of dividends.—Action to recover damages for the alleged illegal declaration of dividends by a foreign corporation survives the death of the defendant. *German-American Coffee Co. v. Johnston* (1915), 168 App. Div. 31, 153 N. Y. Supp. 866.

§ 29. **Liability of directors for loans to stockholders.**—No loans of moneys shall be made by any stock corporation, except a moneyed corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any installment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 25, as amended by L. 1892, ch. 688.

Reference.—Penal Liability, Penal Law, § 664.

Loan of surplus.—It has been held that corporations may temporarily lend their surplus funds on safe security when it is inexpedient to distribute them among the shareholders. *Murray v. Smith* (1915), 166 App. Div. 528, 152 N. Y. Supp. 102.

Unauthorized loan to stockholder.—Where, with the assent of the directors, a corporation loans money to a stockholder upon his note, which he does not repay, the directors are liable to a judgment creditor. *Hemsley & Co. Ltd. v. Duncan Co. Inc.* (1917), 98 Misc. 338, 164 N. Y. Supp. 282.

Use of corporate assets to pay individual debt of stockholder not permitted, even though he own all the stock. So where one who purchases all the stock of a corporation partially pays therefor by delivering promissory notes of the corporation secured by a chattel mortgage, that act being forbidden by statute and, therefore, void *ab initio*, the corporation is entitled to have the notes and the mortgage set aside and the chattel mortgage cancelled of record. *Republican Art Printery, Inc. v. David* (1916), 173 App. Div. 726, 159 N. Y. Supp. 1010.

§ 30. **Officers.**—The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policyholders

of an insurance corporation shall be eligible to election or appointment as its officers.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 27, as amended by L. 1892, ch. 688.

References.—Power of corporation to appoint officers, General Corporation Law, § 11, subd. 4. Adoption of by-laws, Id. § 11, subd. 5. Actions against officers, Id. §§ 110–116.

Acts of officers in apparent scope of authority.—As a general rule corporation is bound thereby, if business is such as corporation is engaged in. *Alexander v. Cauldwell* (1881), 83 N. Y. 480; *Wilson v. Kings Co. El. R. R.* (1889), 114 N. Y. 487, 21 N. E. 1015; *Martin v. Niagara Falls Paper Mfg. Co.* (1890), 122 N. Y. 165, 25 N. E. 303; *Western R. R. Co. v. Bayne* (1877), 11 Hun 155, *affd.* in (1877), 75 N. Y. 1; *Benesch v. John Hancock Mut. Life Ins. Co.* (1890), 32 N. Y. St. Rep. 73, 11 N. Y. Supp. 348; *Bank of Ithaca v. Potier & Stymus Mfg. Co.* (1888), 17 N. Y. St. Rep. 137, 1 N. Y. Supp. 483; *Hascall v. Life Assn. of America* (1875), 5 Hun 151, *affd.* in (1876), 66 N. Y. 616; *Horton Ice Cream Co. v. Merritt* (1892), 46 N. Y. St. Rep. 416, 17 N. Y. Supp. 718; *First Nat. Bank v. Council Bluffs City Water-Works Co.* (1890), 56 Hun 412, 9 N. Y. Supp. 859; *Sistare v. Best* (1879), 16 Hun 611; *Root v. Olcott* (1886), 42 Hun 536, *affd.* (1889), 115 N. Y. 635, 21 N. E. 1116; *White v. Sheppard* (1899), 41 App. Div. 113, 58 N. Y. Supp. 563; but not otherwise unless authorized by directors, *Leary v. Albany Brewing Co.* (1902), 77 App. Div. 6, 10, 79 N. Y. Supp. 130. Burden is on corporation to show that contract made in its behalf by its president is unauthorized. *Patteson v. Ongley Elec. Co.* (1895), 87 Hun 462, 34 N. Y. Supp. 209, *affd.* (1898), 155 N. Y. 674, 49 N. E. 1101. Knowledge of person contracting that officer's act is unauthorized, defeats recovery. *Stallcup v. National Bank of the Republic* (1888), 15 N. Y. St. Rep. 39, *affd.* (1889), 117 N. Y. 630, 22 N. E. 1128. By-laws not known to party contracting which limit apparent powers, are not binding on third persons. *Rathbun v. Snow* (1890), 123 N. Y. 343, 25 N. E. 379, 10 L. R. A. 355; *Smith v. Martin Anti-Fire Car Heater Co.* (1892), 47 N. Y. St. Rep. 26, 19 N. Y. Supp. 285; *Parmelee v. Associated Physicians and Surgeons* (1895), 11 Misc. 363, 32 N. Y. 149; *Marine National Bank of Buffalo v. Butler Collier Co.* (1889), 23 N. Y. St. Rep. 318, 5 N. Y. Supp. 291, *affd.* (1890), 125 N. Y. 695, 26 N. E. 751; *Powers v. Schlicht Heat & Power Co.* (1897), 23 App. Div. 380, 48 N. Y. Supp. 237, *affd.* (1901), 165 N. Y. 662, 59 N. E. 1129; *Perry v. Council Bluffs Water-Works Co.* (1893), 67 Hun 456, 22 N. Y. Supp. 151, *affd.* (1894), 143 N. Y. 637, 37 N. E. 826; *Newman v. Lee* (1903), 87 App. Div. 116, 84 N. Y. Supp. 106. Authority of president may be implied from power he is accustomed to exercise, acquiesced in by corporation. *Chambers v. Lancaster* (1899), 160 N. Y. 342, 54 N. E. 707. But the payee of a corporate check, who receives it in payment of an individual debt of an officer is chargeable with notice of the incapacity of the officer. *Rochester & Charlotte Turnpike Road Co. v. Paviour* (1900), 164 N. Y. 281, 58 N. E. 114, 52 N. E. 790. Special authority must be shown for *ultra vires* contract by officer. *Broadway Theater Co. v. Dessau* (1899), 45 App. Div. 475, 61 N. Y. Supp. 335.

Ratification of acts of officers; acceptance of benefits.—*Merrill v. Consumers' Coal Co.* (1889), 114 N. Y. 216, 21 N. E. 155; *Jourdan v. Long Island R. R. Co.* (1889), 115 N. Y. 380, 22 N. E. 153; *Huntington v. Attrill* (1890), 118 N. Y. 365, 23 N. E. 544; *Fifth Nat. Bank v. Navassa Phosphate Co.* (1890), 119 N. Y. 256, 23 N. E. 737; *Martin v. Niagara Falls Paper Mfg. Co.* (1890), 122 N. Y. 165, 25 N. E. 303; *Grant v. Geo. C. Treadwell Co.* (1894), 82 Hun 591, 31 N. Y. Supp. 702; *Milbank v. Riesthal* (1894), 82 Hun 537, 31 N. Y. Supp. 522; *Nutting v. Kings Co. El. R. R. Co.* (1895), 91 Hun 251, 36 N. Y. Supp. 142; *Bangs v. Nat. Macaroni Co.* (1897), 15 App. Div. 522, 44 N. Y. Supp. 546; *Mather v. Union Loan & Trust Co.* (1889), 26 N. Y. St. Rep. 58, 7 N. Y. Supp. 213; *O'Hara v. Lamson & Goodnow Mfg. Co.* (1883), 2 City Ct. 158;

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Nat. Park Bank v. German-Am. Warehousing Co. (1886), 53 Super. (21 J. & S.) 367; Hall v. Ochs (1898), 34 App. Div. 103, 54 N. Y. Supp. 4. It seems that a corporation will not be liable to an action for malicious prosecution by reason of its ratification of an act already completed by its agent. Morton v. Met. Life Ins. Co. (1884), 34 Hun 366, *affd.* (1886), 103 N. Y. 645.

Personal liability of officers.—Miller v. Reynolds (1895), 92 Hun 400, 36 N. Y. Supp. 660; Chenango Bridge Co. v. Paige (1880), 83 N. Y. 178.

Compensation dependent on agreement.—Mather v. Eureka Mower Co. (1890), 118 N. Y. 629, 23 N. E. 963; Farmers' Loan & Trust Co. v. Housatonic R. R. Co. (1897), 152 N. Y. 251, 46 N. E. 504; Barre v. Calender Insulating, etc., Co. (1888), 50 Hun 257, 2 N. Y. 758; Outterson v. Fonda Lake Paper Co. (1892), 49 N. Y. St. Rep. 556, 20 N. Y. Supp. 980. Employment for life not authorized. Beers v. New York Life Insurance Co. (1892), 66 Hun 75, 20 N. Y. Supp. 788; Carney v. Same (1897), 19 App. Div. 160, 45 N. Y. 1103, *affd.* (1900), 162 N. Y. 453, 57 N. E. 78, 49 L. R. A. 471. Attorney employed by directors must look to corporation for his fee. Drew v. Longwell (1894), 81 Hun 144, 30 N. Y. Supp. 733. Employment of a president and director outside of his official duties, upon a promise by the directors to compensate him, is a valid agreement. Bagley v. Carthage, Watertown, etc., R. R. Co. (1900), 165 N. Y. 179, 58 N. E. 895. Directors cannot vote salaries to one another as mere incidents of the office. Fitchett v. Murphy (1899), 46 App. Div. 181, 61 N. Y. Supp. 182. And officers may not, by action on their own part, increase their compensation without a corresponding increase in duties even though the assets and financial standing of the corporation are increased by their efforts. Kreitner v. Burgweger (1916), 174 App. Div. 48, 160 N. Y. Supp. 256.

Removal of officers.—Secretary is chargeable with knowledge of by-law giving directors power to remove officers at pleasure. Douglass v. Merchants' Ins. Co. (1890), 118 N. Y. 484, 23 N. E. 806, 7 L. R. A. 822.

Executive committee of directors may be appointed. Sheridan Elec. Lt. Co. v. Chatham Nat. Bank (1891), 127 N. Y. 517, 28 N. E. 467.

No presumption that officers are managers.—People ex rel. Carvalho v. Warden of City Prison (1911), 144 App. Div. 24, 128 N. Y. Supp. 837.

Agreement that officers will resign.—Where a person who purchases the controlling interest in a corporation agrees to lend it certain moneys, and the corporation agrees that, upon the happening of a certain event, its officers will resign and certain persons nominated by the lender will be elected in their places, the agreement seems to contravene the provisions of this section and the public policy of the State in that it amounts to a surrender of the discretion of the board of directors in the matter of appointing officers. San Remo Copper Mining Co. v. Mineuse (1912), 149 App. Div. 26, 133 N. Y. Supp. 509.

Vice-president of a bank must be a citizen of the United States. Rept. of Atty. Genl. (1909) 751.

Section cited.—Gause v. Commonwealth Trust Co. (1908), 124 App. Div. 438, 444, 108 N. Y. Supp. 1080, *affd.* (1909), 196 N. Y. 134, 89 N. E. 476, 24 L. R. A. (N. S.) 967.

§ 31. **Inspectors and their oaths.**—The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a moneyed corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall

refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 28, as amended by L. 1892, ch. 688.

References.—Violation of oath or dishonest or corrupt conduct, a misdemeanor, Penal Law, § 668. Corporate elections generally, General Corporation Law, §§ 23-32.

At least two inspectors requisite.—In re Light Hall Mfg. Co. (1888), 47 Hun 258.

Oath of inspectors.—Provision that it should be filed in office of county clerk is directory. Union National Bank v. Scott (1900), 53 App. Div. 65, 66 N. Y. Supp. 145.

§ 32. **Books to be kept.**—Every stock corporation shall keep at its office correct books of account of all its business and transactions, and a book to be known as the stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock book of every such corporation shall be open daily, during at least three business hours, for inspection by any judgment creditor of the corporation; or by any person who shall have been stockholder of record in such corporation for at least six months immediately preceding his demand; or by any person holding stock of such corporation to an amount equal to five per centum of all its outstanding shares; or by any person thereunto in writing authorized by the holders of stock of such corporation to an amount equal to five per centum of all of its outstanding shares. Persons so entitled to inspect stock books may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully

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neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and each officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or of any other corporation, or has aided or abetted any person in procuring any stock list for any such purpose. Nothing herein impairs the power of the courts to compel by mandamus or judgment the production for examination by any stockholder of the stock books of a corporation. (*Amended by L. 1916, ch. 127.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 29, as amended by L. 1892, ch. 688; L. 1900, ch. 128, and L. 1901, ch. 354.

The amendment of 1901 requires the books to be open at least three business hours daily, instead of "daily during business hours," as provided by the former law. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

References.—Misdemeanors in connection with corporate books, Penal Law, § 665. Production of books at meetings, General Corporation Law, § 23. On trial, Code Civ. Pro. §§ 868, 869.

Application of section.—Applies only to domestic corporations. *Matter of Rapleye* (1899), 43 App. Div. 84, 59 N. Y. Supp. 338.

Sections 32 and 33 have reference to the management and control of corporations and have no reference to the Stock Transfer Tax Law. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 674. Application to banking corporations, *Van Tuyl v. Robin* (1913) 80 Misc. 360, 366, 142 N. Y. Supp. 535, mod. (1913), 160 App. Div. 41, 145 N. Y. Supp. 121.

Stock book; when sufficient.—Stock certificate book containing the necessary information to answer all requirements of the statute, showing who the stockholders were, the number of shares held by them and when they became owners thereof deemed sufficient. *Matter of Utica Fire Alarm Telegraph Co.* (1906), 115 App. Div. 821, 101 N. Y. Supp. 109.

Books of accounts of transactions in other states need not be kept at the principal office. *Rept. of Atty. Genl.* (1901) 253.

Right to inspect.—Director's right is absolute. *People ex rel. Leach v. Central Fish Co.* (1907), 117 App. Div. 77, 101 N. Y. Supp. 1108. Stockholder has an absolute right. *People ex rel. Britton v. Am. Press Assn.* (1912), 148 App. Div. 651, 133 N. Y. Supp. 216; *People ex rel. Rottenberg v. Utah Gold & Copper Mining Co.* (1909), 135 App. Div. 418, 119 N. Y. Supp. 852. Pledgor of corporate stock may inspect books. *Booth v. Consol. Fruit Jar Co.* (1909), 62 Misc. 252, 114 N. Y. Supp. 1000. Executor and sole legatee, holding half the capital stock. *Matter of Hastings* (1908), 128 App. Div. 516, 112 N. Y. Supp. 800, *affd.* (1909), 194 N. Y. 546, 87 N. E. 1120.

A stockholder of a national bank is entitled, under this section, to inspect the stock book of the bank for the purpose of ascertaining the names of other stockholders, in order that he may negotiate with such other stockholders for the purchase of their stock, and as an incident to this right, he may copy from such book and take away with him, a list of the other stockholders. *People ex*

rel. *Lorge v. Consolidated National Bank* (1905), 105 App. Div. 409, 94 N. Y. Supp. 173.

Identity of person seeking inspection.—While a stockholder has an absolute right to inspect the stock-book of a corporation at its office during business hours, the officers and agents of the corporation, before granting such inspection, may require reasonable proof of an unknown demandant that he is the person named in the certificate of stock presented. *Thelle v. Merlis* (1914), 85 Misc. 351, 147 N. Y. Supp. 405.

Motive and purpose of inspection.—Where the right to inspect exists, the motive is immaterial, except in so far as the remedy by mandamus is concerned. *People ex rel. Gunst v. Goldstein* (1889), 37 App. Div. 550, 56 N. Y. Supp. 306; *People ex rel. Harriman v. Peaton* (1887), 20 Abb. N. C. 195; *People ex rel. Callanan v. Keeseville, etc., R. R. Co.* (1905), 106 App. Div. 349, 94 N. Y. Supp. 555, 182 N. Y. 600; *Matter of Steinway* (1899), 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461. Includes the right to take extracts. *Matter of Martin* (1891), 62 Hun 557, 17 N. Y. Supp. 133, *affd.* (1892), 133 N. Y. 692, 31 N. E. 627; *People ex rel. Lorge v. Consolidated Nat. Bk.* (1905), 105 App. Div. 409, 94 N. Y. Supp. 173; *Cotheal v. Brouwen* (1851), 5 N. Y. 562.

Place of inspection.—Demand must be made at office where stock book is kept. *Buker v. Steele* (1896), 43 N. Y. Supp. 346. Where stock-book was not at main office of corporation, but at office of president a short distance away, and person seeking inspection was so informed and told that he might inspect it there, this constitutes neither a refusal nor a neglect to exhibit the book. *Lozler v. Saratoga Gas Co.* (1901), 59 App. Div. 390, 69 N. Y. Supp. 247.

Where no stock-book is kept, refusal to exhibit it at the request of a judgment creditor does not render the corporation liable to him, but only to the people of the State. *Moore v. Inst. of Educational Travel, Inc.* (1915), 89 Misc. 369, 151 N. Y. Supp. 929.

Where refusal to permit inspection unjustified.—Because of stockholder is present. *Classon v. Nassau Ferry Co.* (1895), 86 Hun 128, 33 N. Y. Supp. 244. Reasonable excuse for temporary delay. *Kelsey v. Pfander Process Co.* (1886), 41 Hun 20.

Action for penalty.—Stockholder's right to recover, not affected by his motive. *People ex rel. Britton v. Am. Press Assn.* (1912), 148 App. Div. 651, 133 N. Y. Supp. 216; *Henry v. Babcock & Wilcox Co.* (1909), 196 N. Y. 302, 89 N. E. 942.

Liability for but one penalty.—The defendants are liable for but one penalty in case of three separate refusals to exhibit stock books where it is admitted that the plaintiff's several demands for inspection were for the purpose of getting certain definite information once for all. *Walcott v. Little* (1904), 46 Misc. 96, 91 N. Y. Supp. 411.

Remedy by mandamus.—Common-law right of stockholder to inspect books still exists, unimpaired by legislation; and Supreme Court has power, in its sound discretion, upon good cause shown, to enforce the right by mandamus. *Matter of Steinway* (1899), 159 N. Y. 250, 53 N. E. 1103, 45 L. R. A. 461; *Henry v. Babcock & Wilcox Co.* (1909), 196 N. Y. 302, 89 N. E. 942; *People ex rel. Hunter v. Nat. Park Bank* (1907), 122 App. Div. 635, 638, 107 N. Y. Supp. 369; *People ex rel. Britton v. Am. Press Assn.* (1912), 148 App. Div. 651, 133 N. Y. Supp. 216; *Matter of Hitchcock* (1913), 157 App. Div. 328, 142 N. Y. Supp. 247.

Limitations upon remedy by mandamus.—This remedy, being discretionary with the court, will not be granted, even in cases where the right to the inspection is absolute, when it is sought to gratify idle curiosity, or to facilitate speculative schemes, or for ulterior or sinister motives. *Matter of Hitchcock* (1913), 157 App. Div. 328, 142 N. Y. Supp. 247, and cases cited. Where inspection of books of account generally is sought, stockholder should request verified statement of its affairs under section 69. *People ex rel. Classon v. Nassau Ferry Co.* (1895), 86

Hun 128, 33 N. Y. Supp. 244. Where particular information is sought, a precedent demand for it, and not simply a demand under section 69, must be shown. *Matter of Hitchcock* (1912), 149 App. Div. 824, 134 N. Y. Supp. 174.

Mandamus; when granted.—Where petitioner alleges that bonds of the corporation were redeemed before maturity at a greater cost than the market value at the time of redemption. *Matter of Hitchcock* (1913), 157 App. Div. 328, 142 N. Y. Supp. 247. An executor and sole legatee, holding half the capital stock and not interested in any rival business and not adverse to the interests of the corporation. *Matter of Hastings* (1908), 128 App. Div. 516, 112 N. Y. Supp. 800, *affd.* (1909), 194 N. Y. 546, 87 N. E. 1120. Where petitioner, a large stockholder, alleges that the corporation is expending large sums of money in building a factory on land owned by its president's sister, and that he believes it to be mismanaged. *People ex rel. Ludwig v. Ludwig & Co.* (1908), 126 App. Div. 696, 111 N. Y. Supp. 94.

Mandamus; when refused.—When inspection sought solely to annoy corporation. *People ex rel. McElwee v. Produce Ex. Trust Co.* (1900), 53 App. Div. 93, 65 N. Y. Supp. 926; *People ex rel. Callanan v. Keeseville H. C. & Lake Champlain R. R. Co.* (1905), 106 App. Div. 349, 94 N. Y. Supp. 555. To furnish information to the president of a competing company as to the corporation's contracts, prices and methods of doing business. *People ex rel. Lehman v. Consolidated Fire Alarm Co.* (1911), 145 App. Div. 427, 127 N. Y. Supp. 348; *People ex rel. Britton v. Am. Press Assn.* (1912), 148 App. Div. 651, 133 N. Y. Supp. 216. To compel transfer of stock on corporate books. *People ex rel. Rottenberg v. Utah Gold & Copper M. Co.* (1909), 135 App. Div. 418, 119 N. Y. Supp. 852. When information is sought to be used in a suit against directors personally. *Matter of Taylor* (1907), 117 App. Div. 348, 101 N. Y. Supp. 1039.

Transfers of stock.—Corporation must transfer to bona fide purchaser, where discretion is not expressly reserved. *Rice v. Rockefeller* (1892), 134 N. Y. 174, 31 N. E. 907, 17 L. R. A. 237; *Hawes v. Gas Consumers' Benefit Co.* (1891), 36 N. Y. St. Rep. 48, 12 N. Y. Supp. 924; *Cushman v. Thayer Mfg. Jewelry Co.* (1879), 76 N. Y. 365; *Robinson v. Nat. Bank of New Berne* (1884), 95 N. Y. 637. Entire title passes without transfer on books. *Chemical Nat. Bank v. Colwell* (1892), 132 N. Y. 250, 30 N. E. 644. Creditor may rely on book evidence. *Hamilton Trust Co. v. Clemes* (1897), 17 App. Div. 152, 45 N. Y. Supp. 141, *affd.* (1900), 163 N. Y. 423, 57 N. E. 614. Corporation may treat registered shareholders as actual owners. *Campbell v. Am. Zylonite Co.* (1890), 122 N. Y. 455, 25 N. E. 853, 11 L. R. A. 596. Issue of certificate not essential to create relation of stockholder. *Beals v. Buffalo Construction Co.* (1900), 49 App. Div. 589, 63 N. Y. Supp. 635. That a person is a stockholder may be shown otherwise than by stock book. *Union Nat. Bank v. Scott* (1900), 53 App. Div. 65, 66 N. Y. Supp. 145.

Mandamus does not lie to compel transfer of stock.—*People ex rel. Rottenberg v. Utah Gold & Copper M. Co.* (1909), 135 App. Div. 418, 119 N. Y. Supp. 852, citing cases. Remedy is by action. *Id.*

While a stock book is presumptive evidence, under section 32 of the Stock Corporation Law, that a defendant is a stockholder, the mere transfer of shares on the books of the corporation will not constitute him one. *Breck v. Brewster* (1912), 150 App. Div. 202, 134 N. Y. Supp. 697.

§ 33. **Stock books of foreign corporations.**—Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of resi-

dence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for inspection by any judgment creditor of such corporation; by any officer of this state authorized by law to investigate the affairs of any such corporation; by any person who shall have been stockholder of record in such corporation for at least six months immediately preceding his demand; by any person holding stock of such corporation to an amount equal to five per centum of all of its outstanding shares; or by any person thereunto in writing authorized by the holders of stock of such corporation to an amount equal to five per centum of all of its outstanding shares. Persons so entitled to inspect stock books may make extracts therefrom. If any such foreign stock corporation has in this state a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of fifty dollars to be recovered by the person to whom such refusal was made. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or of any other corporation or has aided or abetted any person in procuring any stock list for any such purpose. Nothing herein impairs the power of the courts to compel by mandamus or judgment the production for examination by any stockholder of the stock books of a corporation. (*Amended by L. 1916, ch. 127.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 53, as renumbered and amended by L. 1892, ch. 688, and amended by L. 1897, ch. 384.

Consolidators' note.—Section 53 is transferred to art. 3, for the reason that it relates to books to be kept by foreign corporations, and should follow § 32 (former § 29), which relates to books to be kept by domestic corporations.

References.—Refusal to allow inspection of books. Penal Law, § 665. See decisions under § 32, ante.

Constitutionality.—This section is not unconstitutional on the theory that it is in restraint of interstate commerce. *Hovey v. De Long Hook & Eye Co.* (1911), 147 App. Div. 881, 133 N. Y. Supp. 25, followed in (1911), 147 App. Div. 892, 133 N. Y. Supp. 33. The judgments were reversed by the Court of Appeals without determining the point of constitutionality (1914), 211 N. Y. 420, 573, 105 N. E. 667.

Construction.—*Henry v. Babcock & Wilcox Co.* (1909), 196 N. Y. 302, 89 N. E. 942, revg. (1908), 125 App. Div. 538, 109 N. Y. Supp. 853; *Hovey v. De Long Hook & Eye Co.* (1914), 211 N. Y. 420, 105 N. E. 667, revg. (1911), 147 App. Div. 881, 133 N. Y. Supp. 25.

Right to inspect book.—Stockholder has absolute right which cannot be refused because of his intent or motive in seeking inspection. *Henry v. Babcock & Wilcox Co.* (1909), 196 N. Y. 302, 89 N. E. 942. Includes right to take extracts. *Id.*; *Hollaman v. El Arco Mines Co.* (1910), 137 App. Div. 862, 122 N. Y. Supp. 852.

Director's right absolute, notwithstanding fact that he is only a dummy director put forward to comply with statutory requirement of three directors. *People ex rel. Stauffer v. Bonwit Bros.* (1910), 69 Misc. 70, 125 N. Y. Supp. 958.

What constitutes having office in this state.—The defendant was organized under the laws of the State of Pennsylvania and in that state had its factory and general offices. It sold its goods in the state of New York through traveling salesmen, who took orders which were transmitted to the office in Pennsylvania subject to approval, which were filled by shipment from the factory in that state. An office was maintained in the city of New York, for the purpose of furnishing headquarters for salesmen traveling in that locality where they might meet customers and conduct correspondence. No bank account was maintained in that city; no books of account or goods for sale were kept there and no collections for goods sold were made from that office; no stock transfer books were kept there and no meeting of stockholders, directors or officers was ever held there. It was *held*, that failure to keep a stock book at such office does not subject it to the penalty provided in case of failure by a foreign stock corporation having an office for the transaction of business in this state to keep therein a book to be known as a stock book for the inspection of its stockholders and judgment creditors. *Hovey v. DeLong Hook & Eye Co.* (1914), 211 N. Y. 420, 105 N. E. 667.

In an action brought under this section to recover a penalty for the failure to exhibit to a stockholder of the foreign corporation the stock book of such corporation, evidence that the plaintiff went to an office in the city of New York occupied by the president and secretary of the corporation, and was informed by the secretary thereof that it was the office of the corporation and that its books were there, coupled with the admission of the secretary that the corporation had no other office anywhere and that all the business of the company was transacted at that place, justifies a finding that the corporation had an office for the transaction of business within the state, within the meaning of the above section. *Cox v. Island Mining Co.* (1901), 65 App. Div. 508, 73 N. Y. Supp. 69 modf. (1903), 175 N. Y. 328, 67 N. E. 586.

A foreign corporation must be deemed to have an office for the transaction of business in this state where the corporation pays rent for the office, has a person permanently in charge of it, deposits money and pays dividends therefrom. Where such foreign corporation does not keep its stock book in such office, but does keep certain books containing some or all of the information required to be shown by a stock book when kept, a stockholder of such corporation is entitled to an inspection of such books. *People ex rel. Singer v. Knickerbocker Trust Co.* (1902), 38 Misc. 446, 77 N. Y. Supp. 1000.

The maintenance by a foreign corporation of a transfer agent in this state merely for the convenience of its stockholders and to facilitate the sale of its stock does not constitute the maintenance of an office for the "transaction of business" within the meaning of the statute. *Wadsworth v. Equitable Trust Co.* (1912), 153 App. Div. 737, 138 N. Y. Supp. 842.

Where a foreign corporation, having no office in this state, employed defendant, a trust company in the city of New York, to deliver stock certificates executed in blank to persons who should surrender an equivalent amount of old certificates properly indorsed, the actual transfer of the stock being made at the home office of the corporation, the office of its stock transfer agent is not in any sense the office of the corporation "for the transaction of business" within the meaning of section 33 of the Stock Corporation Law, and said agent is not liable for the penalty provided by said section. *Althause v. Guaranty Trust Co.* (1912), 78 Misc. 181, 137 N. Y. Supp. 945.

Maintaining a "sales office" in this state. *Hovey v. Proctor & Gamble Co.* (1910), 139 App. Div. 521, 124 N. Y. Supp. 128.

The word "agent" as used in this section refers to the "transfer agent" of the foreign corporation in this state and has no application to the principal sales agent. *Hovey v. Eiswald* (1910), 139 App. Div. 433, 124 N. Y. Supp. 130.

The word "inspection" as used in this section is broad enough to authorize the making of extracts from the books. *Althause v. Giroux* (1907), 56 Misc. 508, 511, 107 N. Y. Supp. 191.

Place of inspection is the office of the company, and the stockholder cannot be compelled to go elsewhere. *Recknagle v. Empire Self-Lighting Oil Lamp Co.* (1898), 24 Misc. 193, 52 N. Y. Supp. 635. See also *Greene v. Shain* (1898), 22 Misc. 720, 49 N. Y. Supp. 1061.

When keeping of stock-book for inspection by stockholders excused; stock book taken from corporation under subpoena *duces tecum*, see *Otto v. Franklin's, Inc.* (1915), 90 Misc. 311, 153 N. Y. Supp. 107.

Failure to keep stock book at its office in this state is no defense to an action for a penalty. *Hovey v. Proctor & Gamble Co.* (1910), 139 App. Div. 521, 124 N. Y. Supp. 128.

Corporation, as well as officers, liable.—*Cox v. Island Mining Co.* (1901), 65 App. Div. 508, 73 N. Y. Supp. 69, modf. (1903), 175 N. Y. 328, 67 N. E. 586.

Actions for penalties.—The refusal of the secretary of a corporation to permit a stockholder at his request to examine the stockbook, followed the next day by a similar demand and refusal, and upon the day after by the refusal by the president of the same request, constitute but one demand and but one refusal on one occasion and not three demands and three refusals, and renders each officer and the corporation liable to but one penalty under the above section. *Cox v. Paul* (1903), 175 N. Y. 328, 67 N. E. 586.

Where two separate actions are brought by a stockholder against a foreign corporation to receive a penalty for a refusal to permit an inspection of the stock-book, one against the corporation, and the other against its transfer agent, the appellate division will not, on appeal, consider the right of the plaintiff to maintain the two separate suits, if the point was not raised in the court below. *Tyng v. Corporation Trust Co.* (1905), 104 App. Div. 486, 93 N. Y. Supp. 928.

Mandamus against transfer agent, not the corporation, is the remedy. *People ex rel. Field v. Northern Pac. R. R. Co.* (1884), 50 N. Y. Super. (18 J. & S.) 456; *Hatch v. L. S. & M. S. R. R. Co.* (1877), 11 Hun 1, affd. (1877), 70 N. Y. 220. Reference may be ordered. *People ex rel. Del Mar v. St. Louis, etc., R. R. Co.* (1887), 44 Hun 552.

There is no express provision of law authorizing the issuance of a writ of mandamus to enforce the provisions of this section, and when an application is made, whether such writ will issue rests in the sound discretion of the court. Thus, it will be denied where the stockholder desires a complete list of stockholders merely to send out circulars offering to sell stock of other corporations. *People ex rel. Althause v. Giroux Consolidated Mines Co.* (1907), 122 App. Div. 617, 107 N. Y. Supp. 188.

Proof of refusal to permit inspection.—When a stockholder goes to the office of a foreign corporation where its stock book is required by law to be kept, and makes a demand, during office hours, upon the person apparently in charge of the office that an inspection be permitted, a *prima facie* case is made out; he is not required to prove, in the first instance, that the person apparently in charge bore any particular relation to the company. *Pelletreau v. Greene Consol. Gold Mining Co.* (1906), 49 Misc. 233, 97 N. Y. Supp. 391.

Where a corporation had ceased business, given up its offices and deposited its books in a stock brokerage office, where plaintiff, a stockholder, made a demand in writing and orally to two of the corporation officers for an inspection of the stock book, and the same night or the following morning a list of stock-

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holders was mailed to the plaintiff who acknowledged its receipt and requested the stockholders' addresses; and where such facts appear in an action, begun by him to recover the penalty under this section, for a refusal to allow him to inspect the stock book, commenced before a request for the stockholders' addresses was received, no cause of action is established. *Fuller v. O'Connor* (1908), 61 Misc. 279, 113 N. Y. Supp. 684.

A refusal to permit an inspection is made out where the transfer agents have met with evasive answers only the stockholder's repeated demands for such inspection. *People ex rel. Miles v. Montreal & Boston Copper Co.* (1903), 40 Misc. 282, 81 N. Y. Supp. 974.

The fact that the stock book did not contain each item required by statute to be recorded therein is not an excuse for a failure to comply with a stockholder's request. *Tyng v. Corporation Trust Co.* (1905), 104 App. Div. 486, 93 N. Y. Supp. 928.

Sufficiency of pleading.—A complaint in an action under this section, which does not state that the defendant is a "stock" corporation and is not a "moneyed or railroad" corporation, is fatally defective, and the deficiency is not such as can be cured by judgment. *Seydel v. Corporation Liquidating Co.* (1905), 46 Misc. 576, 92 N. Y. Supp. 225.

Proof required.—Unless the plaintiff proves by competent evidence that the defendant is a stock corporation having an office for the transaction of business, or a transfer agent in this state, that such corporation is not a moneyed or railroad corporation, and that the plaintiff is a stockholder therein, he cannot recover. *Hollister v. Deforest Wireless Telegraph Co.* (1905), 47 Misc. 674, 94 N. Y. Supp. 504.

§ 34. Annual report to secretary of state.—Every domestic stock corporation and every foreign stock corporation doing business within this state, except moneyed and railroad corporations, shall annually, during the month of January, or, if doing business without the United States, before the first day of May, may make a report as of the first day of January, which will state:

1. The amount of its capital stock, and the proportion actually issued.
2. The amount of its debts or an amount which they do not exceed.
3. The amount of its assets or an amount which its assets at least equal.
4. The names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the code of civil procedure, as a person upon whom process against the corporation may be served within this state.

Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the secretary of state. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 30, as amended by L. 1892, ch. 2; L. 1892, ch. 688; L. 1897, ch. 384; L. 1901, ch. 354, and L. 1905, ch. 415.

The amendment of 1901 to the former law transferred the duty of filing the annual report from the directors to the executive officers, and strikes out the penalty clause for failure to file, which made the directors liable for all the existing debts, substituting a provision that for failure to file, after request, the officer shall be liable to a penalty of fifty dollars for each day's delay. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

The amendment of 1905 added the fourth subdivision.

References.—Penal liability for knowingly making false report, Penal Law, § 665. Presumption of knowledge, Id. § 667.

Decisions.—The decisions, prior to 1901, rendered under this section are practically all superseded or rendered obsolete by the amendments of 1901, except as to pending rights of action. For collation of authorities, see "The Annotated Corporation Laws of All the States," Cumming, Gilbert & Woodward, under New York, p. 42; White on Corporations.

Liability prior to amendment of 1901.—A director was not liable under the law as it existed in 1895 when, at the time of the failure to file the report, the corporation was insolvent, had ceased to do business, and had been abandoned by its incorporators. *Costello v. Outterson* (1906), 112 App. Div. 680, 98 App. Div. 880.

Doing business without the United States.—A corporation doing business within the state of New York, which endeavors to sell its stock in Europe, and by obtaining patents there to prevent foreigners from manufacturing its own distinctive product, is not doing business "without the United States," within the meaning of his section. *West v. Grosvenor* (1905), 102 App. Div. 266, 92 N. Y. Supp. 429.

Statement of assets.—A statement in an annual report of a corporation that the assets thereof "at least did not exceed the sum of \$1,400,000" is not a compliance with the requirements of the statute. The rule deduced from all the cases is that the statute is to be construed strictly, and the report filed in attempted compliance with it must be construed liberally. *Lillenthal v. Betz* (1901), 61 App. Div. 601, 70 N. Y. Supp. 920, *affd.* (1902), 172 N. Y. 643, 65 N. E. 1118.

Place of filing.—See *Uptegrove v. Schwarzwald* (1899), 46 App. Div. 20, 61 N. Y. Supp. 623, *affd.* (1901), 167 N. Y. 587, 60 N. E. 1121.

Effect of abandonment of business.—The mere fact that a stock corporation ceases doing business does not relieve its directors from the necessity of filing an annual report. In order to have that effect, the abandonment of the business must be certain and final, and such as to place the corporation beyond the possibility of resuming business. *Stevenson v. Cowen* (1903), 84 App. Div. 135, 82 N. Y. Supp. 78.

Enforcement of liability.—A receiver appointed in supplementary proceedings may sue directors of a corporation, indebted to the judgment debtor, for a failure to file an annual report. *Boynton v. Sprague* (1905), 100 App. Div. 443, 91 N. Y. Supp. 839, *affd.* (1905), 183 N. Y. 505, 76 N. E. 1089.

Effect of general assignment.—A general assignment for the benefit of creditors does not necessarily relieve the directors from the liability imposed upon them by the above section for failure to file an annual report of the corporation. To relieve the directors of the liability it must appear that the corporation is insolvent, that it has ceased to exist by dissolution, or as a matter of fact from a total abandonment of its business and is in such a position that it does not intend to and cannot continue to resume operations under its franchise. *Horrocks Desk Co. v. Fangel* (1902), 71 App. Div. 313, 75 N. Y. Supp. 967.

Action for penalty; sufficiency of summons.—An action to enforce a directors' liability for a failure of the corporation to file an annual report is an action for a penalty, and a summons served therein must conform to § 1897 of the Code of Civil Procedure relating to the form of a summons in an action for a penalty.

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Farmers and Merchants' State Bank v. Stringer (1902), 75 App. Div. 127, 77 N. Y. Supp. 410.

Statute of limitations.—An action to recover the penalty imposed for a failure to file the annual report of a corporation in January, 1901, is barred by the six-months statute and limitations prescribed in § 5 of ch. 354 of the Laws of 1901. *Davidson v. Witthaus* (1905), 106 App. Div. 182, 94 N. Y. Supp. 428. Section 5 of ch. 354 of the Laws of 1901, was said to be a condition precedent and not a statute of limitations. *Watertown Nat. Bank v. Bagley* (1909), 62 Misc. 380, 116 N. Y. Supp. 772, *affd.* (1909), 134 App. Div. 831, 119 N. Y. Supp. 592. In that case the appellate division held that whether the provision was a condition precedent or a statute of limitation, it might be waived by agreement.

Section cited to show parallel rules to which foreign and domestic corporations are subject. *South Bay Co. v. Howey* (1907), 190 N. Y. 240, 83 N. E. 26, *revg.* (1889), 113 App. Div. 382, 98 N. Y. Supp. 909.

§ 35. Liability of officers for false certificates, reports or public notices.—

If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 31, as amended by L. 1892, ch. 688.

The liability imposed by the statute is not penal in an international sense; the test is whether it seeks to punish an offense against the public justice of the state or to afford a private remedy to a person injured by the wrongful act. *Huntington v. Attrill* (1892), 146 U. S. 657, 36 L. ed. 1123, 13 Sup. Ct. 224, *revg.* *Attrill v. Huntington* (1890), 70 Md. 191.

The liability imposed upon officers of a corporation for false statements contained in an annual report in favor of any person becoming a stockholder upon the faith of such report to the extent of the damages sustained by such stockholder, does not render the above section a penal statute to be governed by § 983 of the Code of Civil Procedure, requiring actions to recover penalties imposed by statute to be tried in the county where the cause of action arose. *Hutchinson v. Young* (1903), 80 App. Div. 246, 80 N. Y. Supp. 259.

Liability for debts incurred prior to report.—This section is not available to creditors whose debts were incurred prior to the making of the certificate or report alleged to be false, and who consequently did not rely upon the credit thereof. *Bagley & Sewell v. Lenning* (1901), 61 App. Div. 26, 70 N. Y. Supp. 242.

Unverified answer.—In an action brought pursuant to this section to charge a director of a corporation with liability for issuing false reports, the defendant may serve an unverified answer although the complaint is verified, because such act by a director is made a misdemeanor by section 665 of the Penal Law. *Thompson v. McLaughlin* (1910), 138 App. Div. 711, 123 N. Y. Supp. 762.

ARTICLE IV.

STOCK AND STOCKHOLDERS.

Section 50. Issue and transfers of stock.

51. Transfers of stock by stockholder indebted to corporation.
52. Purchase of stock of other corporations.
53. Subscriptions to stock.
54. Time of payment of subscriptions to stock.
55. Consideration for issue of stock and bonds.
56. Liabilities of stockholders.
57. Liabilities of stockholders to laborers, servants or employees.
58. Non-liability in certain cases.
59. Limitation of stockholder's liability.
60. Partly paid stock.
61. Preferred and common stock.
62. Increase or reduction of capital stock.
63. Notice of meeting to increase or reduce capital stock.
64. Conduct of such meeting; certificate of increase or reduction.
65. Change in par value of shares.
66. Prohibited transfers to officers or stockholders.
67. Application to court to order issue of new in place of lost certificate of stock.
68. Order of court upon such application.
69. Financial statement to stockholders.
70. Liabilities of officers, directors and stockholders of foreign corporations.

§ 50. Issue and transfers of stock.—The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 40, in part, as amended by L. 1892, ch. 688, and L. 1902, ch. 601.

Consolidators' note.—This section contains the first two sentences of former § 40, which has been divided into three sections (§§ 8, 50, 52), but former § 26 has been taken from art. 3, and placed after those first two sentences of former § 40, with its number changed to 51. It has been so placed because it relates to the same subject matter as the first two sentences mentioned which it follows, i. e., transfers of stock. The remaining portions of § 40 have been made §§ 8 and 52.

References.—Fraudulent issue, Penal Law, § 662. Transfer of stock, § 32, ante.

Nature of stock certificates.—Considered generally. *Williams v. Western Union Tel. Co.* (1881), 9 Abb. N. C. 437; *Burrell v. Bushwick R. R. Co.* (1878), 75 N. Y.

211; *Esmond v. Apgar* (1879), 76 N. Y. 359; *Jermain v. L. S. & M. S. R. R. Co.* (1883), 91 N. Y. 483. Do not possess full character of negotiable paper. *Weaver v. Barden* (1872), 49 N. Y. 286; *Jarvis v. Manhattan Beach R. R. Co.* (1896), 148 N. Y. 652, 43 N. E. 68, 31 L. R. A. 776; *Knox v. Eden Musee Co.* (1896), 148 N. Y. 441, 42 N. E. 988; 31 L. R. A. 779, revg. (1893), 74 Hun 483, 17 N. Y. Supp. 365.

Issuance of stock, what constitutes; how compelled.—*Jones v. Terre Haute R. R. Co.* (1874), 57 N. Y. 196; *Holbrook v. N. J. Zinc Co.* (1874), 57 N. Y. 616; *Halstead v. Dodge* (1884), 51 N. Y. Super. (19 J. & S.), 169, affd. (1886), 103 N. Y. 636; *Titus v. Gt. Western Turnpike Road* (1874), 61 N. Y. 237; *Nelson v. Lulling* (1875), 62 N. Y. 645; *Brisbain v. D., L. & W. R. R. Co.* (1873), 94 N. Y. 202; *Johnson v. Albany & Susq. R. R. Co.* (1873), 54 N. Y. 416; *Anthony v. American Glucose Co.* (1893), 49 N. Y. St. Rep. 857, 21 N. Y. Supp. 667, affd. (1895), 146 N. Y. 407, 41 N. E. 23. Agreement to deposit with trust company and not sell for six months, held void. *Williams v. Montgomery* (1893), 68 Hun 416, 22 N. Y. Supp. 1033, modf. (1896), 148 N. Y. 519, 43 N. E. 57. Issuance of certificate not essential to relation of stockholder. *Beals v. Buffalo Construction Co.* (1900), 49 App. Div. 589, 63 N. Y. Supp. 635.

Liability of corporation for fraudulent issue by officers.—*Titus v. Gt. Western Turnpike Road Co.* (1874), 61 N. Y. 237; *Archer v. Dunham* (1895), 89 Hun 387, 35 N. Y. Supp. 387; *Jarvis v. Manhattan Beach Co.* (1896), 148 N. Y. 652, 43 N. E. 68, 31 L. R. A. 776, affg. (1894), 75 Hun 100, 26 N. Y. Supp. 1061, and citing all the recent cases on the subject.

Transfers of stock as between the parties.—*Cushman v. Thayer Mfg. Jewelry Co.* (1879), 76 N. Y. 365; *Chemical Nat. Bank v. Colwell* (1892), 132 N. Y. 250, 30 N. E. 644; *Smith v. Am. Coal Co.* (1873), 7 Lans. 317; *Holbrook v. N. J. Zinc Co.* (1874), 52 N. Y. 616; *Driscoll v. West, Bradley, etc., Mfg. Co.* (1872), 36 N. Y. Super. (4 J. & S.), 488, affd. (1873), 59 N. Y. 96; *Pearsall v. Western Union Tel. Co.* (1891), 124 N. Y. 256, 26 N. E. 534; *De Caumont v. Bogert* (1885), 36 Hun 382. Effect of transfer. *Rochester & Kettle Falls Land Co. v. Raymond* (1899), 158 N. Y. 576, 53 N. E. 507, 47 L. R. A. 246. By-laws cannot limit unconditional right to transfer. *Kinnan v. Sullivan Co. Club* (1898), 26 App. Div. 213, 50 N. Y. Supp. 95. Limitations in certificate. *Gibbs v. Long Island Bank* (1894), 83 Hun 92, 31 N. Y. Supp. 406, affd. (1897), 151 N. Y. 657, 46 N. E. 1147.

The transfer of a stock certificate does not pass the title, but merely constitutes the transferee an attorney in the name of the holder to make the transfer upon the books of the company. *Gideon v. Representative Securities Corporation* (1916), 232 Fed. 184.

It is the transfer of stock on the books of a corporation which transfers the title, and not the transfer of the certificate. *Id.*

Rights and duties of corporation as stockholder.—*Farmers' Loan & Trust Co. v. N. Y. & N. R. R. Co.* (1896), 150 N. Y. 410, 44 N. E. 1043, 34 L. R. A. 76, revg. (1894), 78 Hun 213, 28 N. Y. Supp. 933; *Rafferty v. Buffalo City Gas Co.* (1899), 37 App. Div. 618, 56 N. Y. Supp. 288; *Pondir v. N. Y., L. E. & W. R. R. Co.* (1893), 72 Hun 384, 25 N. Y. Supp. 560; *Oelbermann v. N. Y. & N. R. R. Co.* (1894), 77 Hun 332, 27 N. Y. Supp. 945; *Einstein v. Rochester Gas & El. Co.* (1895), 146 N. Y. 46, 40 N. E. 631, revg. (1894), 77 Hun 149, 28 N. Y. Supp. 434; *In re Buffalo, N. Y. & Erie R. R. Co.* (1896), 74 N. Y. St. Rep. 345, 37 N. Y. Supp. 1048.

Action to set aside improper transaction.—A stockholder may bring an action in behalf of the corporation for the benefit of himself and all other stockholders to set aside, as fraudulent, an improper transaction consummated at the expense of the corporation before he acquired his stock. *Pollitz v. Gould* (1911), 202 N. Y. 11, 94 N. E. 1088, 38 L. R. A. (1 J. S.) 988.

§§ 51, 52.

Stock and stockholders.

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§ 51. **Transfers of stock by stockholder indebted to corporation.**—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 26, as re-enacted by L. 1892, ch. 688.

Application.—This section is applicable to a domestic banking corporation. *Strahmann v. Yorkville Bank* (1911), 148 App. Div. 8, 132 N. Y. Supp. 130, *affd.* (1913), 210 N. Y. 536, 103 N. E. 1133.

Section must be on certificate.—Otherwise stockholder transfers his liability upon the transfer of his stock, for all calls made subsequent to the transfer. *Rochester & Kettle Falls Land Co. v. Raymond* (1899), 158 N. Y. 576, 53 N. E. 507, 47 L. R. A. 246.

See also *Reynolds v. Bank of Mt. Vernon* (1896), 6 App. Div. 62, 39 N. Y. Supp. 623, *affd.* (1899), 158 N. Y. 740, 53 N. E. 1131; *Union Bank v. United States Exchange Bank* (1911), 143 App. Div. 128, 127 N. Y. Supp. 661.

Sufficient if certificate contain copy of by-law making a provision similar to that made by this section. *Strahmann v. Yorkville Bank* (1911), 148 App. Div. 8, 132 N. Y. Supp. 130, *affd.* (1913), 210 N. Y. 536, 103 N. E. 1133.

§ 52. **Purchase of stock of other corporations.**—Any stock corporation, domestic or foreign, now existing or hereafter organized, except moneyed corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers and privileges of individual owners or holders of such stock.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 40, in part, as amended by L. 1892, ch. 688, and L. 1902, ch. 601.

Application.—By virtue of this section, the New York Central Railroad Company is entitled to hold the stock of foreign railroad corporations, and may intrude its officers into the directorate of the foreign companies, so that, in effect, it is the equitable owner of said companies, and is responsible both to the public and to stockholders for their proper operation. *Venner v. New York Central & H. R. R. R.*

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Co. (1914), 160 App. Div. 127, 145 N. Y. Supp. 725, *affd.* (1916), 217 N. Y. 615, 111 N. E. 487.

Effect of § 14.—The purchase by the consolidated gas company of the stock of other gas and electric companies under the authority of this section is valid, and does not violate § 14, *ante*. *Matter of Attorney-General* (1908), 124 App. Div. 401, 108 N. Y. Supp. 823.

This section is qualified by § 14, *ante*, which prohibits illegal combinations in restraint of trade; and the acquisition by one corporation of the stock of another, which was unauthorized prior to the enactment of such section, was not thereby made lawful, where the effect would be a combination in violation of § 14. *Burrows v. Interborough Metropolitan Co.* (1907), 156 Fed. 389.

The provisions of this section authorizing corporations to acquire evidence of debt of other corporations doing the same general business are limited by the provisions of § 14, *ante*, prohibiting the formation and operation of monopolies. *Continental Securities Co. v. Interborough R. T. Co.* (1908), 165 Fed. 451.

Power of railroad corporation to purchase stock of another railroad corporation is expressly given by this section. *Venner v. New York Central & H. R. R. Co.* (1917), 177 App. Div. 296, 164 N. Y. Supp. 626, *affg.* (1916), 94 Misc. 671, 158 N. Y. Supp. 602.

Section cited.—*People ex rel. D. & H. Co. v. Stevens* (1909), 134 App. Div. 99, 118 N. Y. Supp. 969, *affd.* (1909), 197 N. Y. 1, 90 N. E. 60.

§ 53. Subscriptions to stock.—If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 41, as re-enacted by L. 1892, ch. 688.

References.—Frauds in subscriptions and issuance, Penal Law, §§ 660, 662. Payment of capital stock of business corporation, Business Corporations Law, § 5.

Application.—Requirement as to 10 per cent. does not apply to subscriptions prior to incorporation. *United Growers' Co. v. Eisner* (1897), 22 App. Div. 1, 47 N. Y. Supp. 906.

Object of subscription is to carry out the legitimate purposes of the corporation. *U. S. Vinegar Co. v. Foehrenbach* (1895), 148 N. Y. 58, 42 N. E. 403. To provide a fund to enable the corporation to transact its business and to secure the payment of its debts. *Richards v. Wiener Co.* (1911), 145 App. Div. 353, 358, 129 N. Y. Supp. 951, *affd.* (1912), 207 N. Y. 59, 100 N. E. 592.

Subscriptions, what constitute; when binding.—*Phoenix Warehousing Co. v. Badger* (1876), 67 N. Y. 294; *Union Hotel Co. v. Hersee* (1880), 79 N. Y. 454; *Lake Ontario S. R. R. Co. v. Curtiss* (1880), 80 N. Y. 219; *Buffalo & Jamestown R. R. Co. v. Gifford* (1882), 87 N. Y. 294; *General Electric Co. v. Wightman* (1896), 3 App. Div. 118, 39 N. Y. Supp. 420; *Yonkers Gazette Co. v. Taylor* (1898), 30 App. Div. 334, 51 N. Y. Supp. 969.

A contract to pay for the construction of a railroad in bonds and stocks of the company is not a stock subscription. *Bostwick v. Young* (1907), 118 App. Div. 490, 103 N. Y. Supp. 607, *affd.* (1909), 194 N. Y. 516, 87 N. E. 1115.

Prima facie subscribers to the stock of a corporation are not bound to pay assessments upon their stock, unless the whole capital of the company has been subscribed for; but a subscriber may waive that implied condition by the payment of prior assessments without objection. *Myers v. Sturgis* (1808), 123 App. Div. 470, 472, 108 N. Y. Supp. 528, *affd.* (1909), 197 N. Y. 526, 90 N. E. 1162.

Although a subscriber for the stock of a corporation not yet in existence is not bound by his subscription, he becomes bound when after the due organization he accepts the scrip and gives his check in payment therefor. *Avon Springs Sanitarium Co. v. Kellogg* (1908), 125 App. Div. 51, 53, 109 N. Y. Supp. 153, *affd.* (1909), 194 N. Y. 567, 88 N. E. 1132.

The delivery of certificates of unissued corporate stock to one party on the request of a third party does not raise an implied obligation to pay the corporation therefor. *Sanders v. Proctor* (1916), 172 App. Div. 713, 158 N. Y. Supp. 433.

May be on separate papers.—*Sodus Bay & Corning R. R. Co. v. Hamlin* (1881), 24 Hun 390; *Buffalo & Jamestown R. R. Co. v. Gifford* (1882), 87 N. Y. 294.

Contract is several.—*Phoenix Warehousing Co. v. Badger* (1876), 67 N. Y. 294; *Whittlesey v. Frantz* (1878), 74 N. Y. 456; *Armstrong v. Danahy* (1894), 75 Hun 405, 27 N. Y. Supp. 60; *Yonkers Gazette Co. v. Jones* (1898), 30 App. Div. 316, 51 N. Y. Supp. 973.

Payment.—Check is not payment in money. *Excelsior Grain-Binding Co. v. Stayner* (1881), 25 Hun 91. See *Boyer v. Fenn* (1897), 19 Misc. 128, 43 N. Y. Supp. 533. Neither is the giving of a promissory note. *Hapgoods v. Lusch* (1907), 123 App. Div. 23, 107 N. Y. Supp. 334.

Ratification by payment of calls. *Union Hotel Co. v. Hersee* (1880), 79 N. Y. 454; *Buffalo & Jamestown R. R. Co. v. Gifford* (1882), 87 N. Y. 294.

Subscriptions induced by fraud may be set aside. *Talmadge v. Sanitary Security Co.* (1898), 31 App. Div. 498, 52 N. Y. Supp. 139; *Bosley v. Nat. Machine Co.* (1890), 123 N. Y. 550, 25 N. E. 990; *McDermott v. Harrison* (1890), 30 N. Y. St. Rep. 324, 9 N. Y. Supp. 184.

An action in equity will lie to rescind the subscriptions for corporate stock which were obtained by fraud. In such an action the corporation and its officers may be restrained from asserting the validity of the subscription and from bringing or maintaining any action based upon such subscription. *Mack v. Latta* (1904) 178 N. Y. 525, 71 N. E. 97, 62 L. R. A. 126, *revg.* (1903), 83 App. Div. 242, 82 N. Y. Supp. 130.

Enforcing invalid subscriptions.—Invalid subscription, because of failure to pay 10 per cent. of amount subscribed at time of making subscription, will constitute the basis of an action upon such subscription, where it has been used at the request of the subscriber as collateral security for loan made to the corporation. *Knickerbocker Trust Co. v. Hard* (1902), 67 App. Div. 463, 73 N. Y. Supp. 979. Cannot be validated by assignment where assignee was not a party to subscription contract and it did not contain any provision which conferred any right upon assignee. A provision of the subscription agreement that it might be pledged did not obligate subscriber to pay pledgee any thing which corporation could not compel him to pay. *Harriman National Bank v. Palmer* (1916), 93 Misc. 431, 158 N. Y. Supp. 111. But invalid subscription may become enforceable not only by subsequent cash payment but by a course of dealing between corporation and stockholder. So held where subscribed had received dividends on stock and was director and officer up to time he sold stock for a substantial price. *Jeffery v. Selwyn* (1917), 220 N. Y. 77, 115 N. E. 275, *affg.* (1916), 173 App. Div. 217, 159 N. Y. Supp. 430. Not enforceable where payment not made on subsequent subscription. *South Buffalo Natural Gas Co. v. Bain* (1894), 9 Misc. 425, 30 N. Y. Supp. 264.

Right to participate in subsequent issues.—Where all the authorized stock is not

at once subscribed for and issued, the subscribers to whom stock is issued cannot, in the absence of bad faith, insist upon participating pro rata in subsequent issues; they do not thereby acquire any inherent right to preserve the existing ratio between their stock and the stock issued and outstanding at that particular time. *Russell v. American Gas & Electric Co.* (1912), 152 App. Div. 136, 136 N. Y. Supp. 602.

§ 54. **Time of payment of subscriptions to stock.**—Subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the board of directors may by resolution require. If default shall be made in the payment of any installment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally, or by mail directed to him at his last known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such installments as the receiver or the court may direct.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 43, as amended by L. 1892, ch. 688.

References.—Time of payment of capital of business corporation, *Business Corporations Law*, § 5. See decisions under § 53.

Liability for unpaid subscriptions.—Contract is several. See cases cited under § 53. Certificate not necessary to render original subscriber chargeable as such. *Kohlmetz v. Calkins* (1897), 16 App. Div. 518, 44 N. Y. Supp. 1031. Board may make immediate calls. *Williams v. Taylor* (1886), 41 Hun 545, *revd.* (1890), 120 N. Y. 244, 24 N. E. 288. Extension by legislature of time of payment does not affect liability. *Union Hotel Co. v. Hersee* (1880), 79 N. Y. 454. Subscriber not liable where no directors were named or did he ever have an opportunity to consent to any persons as such. *Dutchess & Columbia Co. R. R. Co. v. Mabbott* (1874), 58 N. Y. 397. Interest is chargeable on subscriptions not paid when due. *Gould v. Town of Oneonta* (1877), 71 N. Y. 298. Directors holding all the stock may release each other from liability. *Non-Electric Fibre Mfg. Co. v. Peabody* (1897), 21 App. Div. 247, 47 N. Y. Supp. 677. Issue of certificate of stock not essential to create relation of shareholder. *Beals v. Buffalo Construction Co.* (1900), 49 App. Div. 589, 63 N. Y. Supp. 635.

Rests upon contract with the corporation, express or implied. *Glenn v. Garth* (1892), 133 N. Y. 18, 30 N. E. 649, 31 N. E. 344; *Rochester & Kettle Falls Land Co. v. Roe* (1896), 7 App. Div. 366, 40 N. Y. Supp. 72. No liability to creditors on bonus stock. *Christensen v. Eno* (1887), 106 N. Y. 97, 12 N. E. 648. See also *Wintringham v. Rosenthal* (1881), 25 Hun 580.

Estoppel of corporation to enforce liability. *Cutting v. Dameral* (1882), 88 N. Y. 410; *Rochester & Kettle Falls Land Co. v. Roe* (1896), 7 App. Div. 366, 40 N. Y. Supp. 72; *Van Cott v. Van Brunt* (1880), 82 N. Y. 535.

Liability of transferees.—Actual transfer divests owner or liability. *Tucker v. Gilman* (1890), 121 N. Y. 189, 24 N. E. 302; *Rochester & Kettle Falls Land Co. v. Raymond* (1896), 4 App. Div. 600, 39 N. Y. Supp. 145, *affd.* (1899), 158 N. Y. 576, 53 N. E. 507, 47 L. R. A. 246; *Billings v. Robinson* (1864), 94 N. Y. 415; *Roosevelt v. Brown* (1854), 11 N. Y. 148.

Unpaid subscriptions assets.—*Cole v. Millerton Iron Co.* (1892), 133 N. Y. 164, 30 N. E. 847; *Bartlett v. Drew* (1874), 57 N. Y. 587; *Dean v. Biggs* (1881), 25 Hun 122, *affd.* (1883), 93 N. Y. 662; *Salt v. Ensign* (1894), 79 Hun 107, 29 N. Y. Supp. 659; *Van Wagenen v. Clark* (1881), 22 Hun 497; *Rathbone v. Ayer* (1903), 84 App. Div. 186, 82 N. Y. Supp. 235.

Forfeiture.—Remedy is cumulative. *Buffalo & N. Y. City R. R. Co. v. Dudley* (1896), 14 N. Y. 336. See also as to validity of sale, etc., *Mitchell v. Vermont Copper Mining Co.* (1876), 67 N. Y. 280; *Mills v. Stewart* (1869), 41 N. Y. 384; *Weeks v. Silver Islet, etc., Co.* (1887), 55 N. Y. Super. (23 J. & S.) 1, *affd.* (1890), 120 N. Y. 620, 23 N. E. 1152; *Dow v. Iowa Central R. R. Co.* (1895), 144 N. Y. 426, 39 N. E. 398; *Ford v. Chase* (1907), 118 App. Div. 605, 103 N. Y. Supp. 30, *affd.* (1907), 189 N. Y. 504, 81 N. E. 1164. Forfeiture is a corporate act involving exercise of judgment and discretion. Validity of forfeiture considered. *Matter of N. Y. & Westchester Town Site Co.* (1911), 145 App. Div. 623, 130 N. Y. Supp. 414.

Corporation of foreign country.—Liability of stockholder in this state to calls. *Bank of China v. Morse* (1899), 44 App. Div. 435, 61 N. Y. Supp. 268, *affd.* (1901), 168 N. Y. 458, 61 N. E. 774, 56 L. R. A. 139.

The liability of stockholders in foreign corporations to creditors of the corporations is not contractual but statutory and cannot be enforced except at the domicile of the corporation where the obligation was created. *Coulter Dry Goods Co. v. Rosenbaum* (1911), 74 Misc. 579, 134 N. Y. Supp. 487.

§ 55. **Consideration for issue of stock and bonds.**—No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. Any corporation, may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this chapter; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation, by law required to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported as issued for property purchased.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 42, as amended by L. 1892, ch. 688, and L. 1901, ch. 354.

The amendment of 1901 to the former law struck out the words "No stock shall be issued for less than its par value. No such bonds shall be issued for less than the fair market value thereof." The last sentence added. The amendment authorizes the issue of stock as full paid at less than its par value for property, and thus supersedes *Gamble v. Queens Co. Water-works Co.* (1890), 123 N. Y. 91, 25 N. E. 201, 9 L. R. A. 527, and other cases to the contrary. In fact, all the decisions here cited should be considered in connection with the former law. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

References.—Fraudulent issue, Penal Law, § 662. Presumptions as to validity of corporate bonds, § 7, ante.

Application of section.—*Matter of Watertown Gas Light Co.* (1908), 127 App. Div. 462, 111 N. Y. Supp. 486.

Property; what constitutes.—The issue of stock without consideration is *ultra vires*. *Hatch v. Western Union Tel. Co.* (1881), 9 Abb. N. C. 430; *Barnes v. Brown* (1880), 80 N. Y. 527; *Thornton v. St. Paul & C. R. R. Co.* (1878), 6 Wk. Dig. 309 (Ct. of App. 1878). But see *Christensen v. Eno* (1887), 106 N. Y. 97, 12 N. E. 648. A leasehold is "property." *Close v. Noyes* (1895), 147 N. Y. 597, 41 N. E. 570. A debt due the company is sufficient consideration. *Veeder v. Mudgett* (1884), 95 N. Y. 295. Good will is property. *Washburn v. Nat. Wall Paper Co.* (1897), 81 Fed. 17. An issue to purchase stock and bonds of rival company to prevent ruinous competition, is for a "lawful purpose." *Rafferty v. Buffalo City Gas Co.* (1899), 37 App. Div. 618, 56 N. Y. Supp. 288. But an issue to a promoter is not an issue for cash or property. *Herbert v. Duryea* (1898), 34 App. Div. 478, 54 N. Y. Supp. 311, *affd.* (1900), 164 N. Y. 596, 58 N. E. 1088; *Lamphere v. Lang* (1913), 157 App. Div. 306, 141 N. Y. Supp. 967, *revd.* (1915), 213 N. Y. 585, 108 N. E. 82. The exclusive right to sell the product of another corporation is not "property." *Powell v. Murray* (1896), 3 App. Div. 273, 28 N. Y. Supp. 233, *affd.* (1899), 157 N. Y. 717, 53 N. E. 1130. A promissory note is ordinarily not property (1904), 134 Fed. 341.

The agreement of a person to co-operate with a publisher to the extent of becoming an editor of a history and to suggest competent persons to write the same, does not constitute property. *Stevens v. Episcopal Church History Co.* (1910), 140 App. Div. 570, 125 N. Y. Supp. 575.

It is illegal for a corporation to issue stock to a person upon the sole consideration that he become president and act as such for the ensuing year so that the corporation shall have the benefit of his business and financial standing. *B. & C. Electrical Construction Co. v. Owen* (1917), 176 App. Div. 399, 163 N. Y. Supp. 31. Issuance of stock for services to be rendered in the future is unauthorized. *Morgan v. Bon Ton Co.* (1914), 165 App. Div. 89, 150 N. Y. Supp. 668.

Where a foreign corporation issued stock to be held as security for the performance of its agreement to deliver bonds subsequently to be issued, and the stockholder surrendered the stock to a New York corporation, which took over the assets and assumed the liabilities of the foreign corporation, and received in exchange therefor the stock of the New York corporation, he became a holder of fully paid stock; but the domestic corporation was not bound by the agreement of the foreign corporation to deliver the bonds of the foreign corporation or to return the purchase price of its stock. Such action would be *ultra vires* under the laws of this state. *Haule v. Consumers' Park Brewing Co.* (1912), 150 App. Div. 582, 135 N. Y. Supp. 900.

Under this section no stock can be issued except for money or for services actually rendered or for property of equal value actually transferred. *Berger v. National Architects' Bronze Co.* (1916), 173 App. Div. 680, 160 N. Y. Supp. 331.

Stock issued for patents is valid, although the directors had no personal knowledge of the value of patents, where they had before them the opinions of others

and exercised their judgment honestly and fairly. *Alpha-Portland Cement Co. v. Schratweiser* (1915), 221 Fed. 258.

An old debt and extension of time for the payment thereof is value within the meaning of the law. *In re Progressive Wall Paper Corp.* (1915), 224 Fed. 143.

Stock issued in good faith in payment for property which subsequently diminished in value cannot be said to have been not fully paid, so as to render the holder liable under section 56. *Alpha Portland Cement Co. v. Schratweiser* (1914), 215 Fed. 982.

Overvaluation of property.—Statute not violated unless fraud is shown. *Van Vleet v. Jones* (1890), 75 Hun 340, 26 N. Y. Supp. 1082; and the questions of overvaluation and fraud are for the jury. *Powers v. Knapp* (1895), 85 Hun 38, 32 N. Y. Supp. 622, *affd.* (1899), 158 N. Y. 733, 53 N. E. 1131; *White, Corbin & Co. v. Jones* (1895), 86 Hun 57, 34 N. Y. Supp. 203, *revd.* (1898), 155 N. Y. 475, 50 N. E. 289; *Brown v. Smith* (1880), 80 N. Y. 650; *Lake S. I. Co. v. Drexel* (1882), 90 N. Y. 87; *Douglass v. Ireland* (1878), 73 N. Y. 100; *Schneck v. Andrews* (1874), 57 N. Y. 133; *National Tube W. Co. v. Gilfillan* (1891), 124 N. Y. 302, 26 N. E. 538.

A purchaser of stock in a corporation organized under Laws 1848, ch. 40, and the amendments thereto, before a certificate that the stock has not been fully paid is made and recorded, and when the stock has not been fully paid for because of overvaluation of property which had been taken in payment therefor, is liable to creditors of the company for an amount equal to the amount of his stock, although he bought the stock without knowing of the overvaluation. *White, Corbin Co. v. Jones* (1901), 167 N. Y. 158, 60 N. E. 422, *revg.* (1899), 45 App. Div. 241, 61 N. Y. Supp. 21.

A widow who had inherited from her husband a business which had been successful for over fifty years, yielding from \$25,000 to \$50,000 a year in actual profits, together with her three sons formed a corporation capitalized at \$150,000, to which she transferred all of the business and subscribed for 1,497 shares of the stock. In an action by the trustees in bankruptcy against the officers and directors of the corporation to compel them to account, it was *held*, that the widow, acting as vice-president, should not be required to account on her subscription, as there was no fraud in the valuation of the property transferred to the corporation. *Williams v. McClave* (1915), 168 App. Div. 192, 154 N. Y. Supp. 38.

Valuation; judgment of directors. In the absence of fraud, the judgment of the directors as to the value of the property purchased, and for which the stock is issued, is made conclusive by the statute. *Alpha-Portland Cement Co. v. Schratweiser* (1915), 221 Fed 258.

A corporation may use its original unissued authorized capital stock for any legitimate or lawful purpose it sees fit. *Archer v. Hesse* (1914), 164 App. Div. 493, 497, 150 N. Y. Supp. 296.

Stock illegally issued not void.—This section does not make stock illegally issued thereunder void, nor the directors or vendor of such stock liable to a subsequent holder for a violation of the section. *Ersfeld v. Exner* (1908), 128 App. Div. 135, 112 N. Y. Supp. 561. Nor does it impose upon the person to whom the stock is issued for less than its par value, any liability to the corporation for the difference between the amount actually paid and the par value. *Thompson v. Knight* (1902), 74 App. Div. 316, 77 N. Y. Supp. 599.

Issue of stock by directors to themselves; conversion.—Directors of a corporation who issue its stock to themselves without payment therefor in property or services are guilty of conversion of the corporate assets. The receiver of such corporation may sue such directors in tort or may waive the tort and recover upon the implied contract to pay the purchase price. *Lamphere v. Lang* (1913), 157 App. Div. 306, 141 N. Y. Supp. 967, *revd.* (1915), 213 N. Y. 585, 108 N. E. 82.

Where stock is issued to directors in violation of this section, a complaint, is an

action against the corporation, is defective where it fails to make such directors parties defendant. *Jones v. Nassau Suburban Home Co.* (1907), 53 Misc. 63, 103 N. Y. Supp. 1089.

Bonds.—Coupons are part of the bond, and are governed by same statute of limitations. *McClelland v. Norfolk Southern R. R. Co.* (1888), 110 N. Y. 469, 475, 18 N. E. 237; *Kelly v. Forty-second St. R. R. Co.* (1899), 37 App. Div. 500, 55 N. Y. Supp. 1096. Held, under former section, that bonds could not be issued for less than par. *Gamble v. Queens Co. Water-works Co.* (1890), 123 N. Y. 91, 25 N. E. 201, 9 L. R. A. 527. Bonds taken as a bonus to stock are not valid. *Duncomb v. N. Y. Housatonic & N. R. R. Co.* (1881), 84 N. Y. 190. But see *Christensen v. Eno* (1887), 106 N. Y. 97, 12 N. E. 648. Presumption of validity. *Ellsworth v. St. Louis, Alton, etc., R. R. Co.* (1885), 98 N. Y. 553. See § 7, ante.

Bonds may be issued to a bank by a company already in debt to the bank, under an agreement that they be issued at their fair market value or at par, for property in the nature of advances, loans, discounts, etc., received for the use and lawful purposes of the corporation. In re *Waterloo Co.* (1904), 134 Fed. 345, petition for writ of certiorari denied (1904), 197 U. S. 621, 49 L. ed. 910, 25 Sup. Ct. 798.

Mortgage bonds issued by a corporation and pledged as collateral security for its note held to have been issued for "property" within the meaning of this section. In re *Progressive Wall Paper Corp.* (1915), 224 Fed. 143.

Bonds cannot be pledged to secure payment of a pre-existing debt, and an extension of the time for payment of a debt does not satisfy the requirement of the statute. The surrender of an old note and the substitution therefor of a new note in its place, either with the same or with different indorsers cannot justify the issuance of bonds, because the corporation does not receive in return money, labor or property within the meaning of the statute. In re *Progressive Wall Paper Corp.* (1916), 229 Fed. 489.

The payment by a bank to a corporation of money which the corporation immediately pays back to the bank to extinguish an old indebtedness, so that a new indebtedness may be created for which bonds may be pledged under the law, is not an issuance of bonds "for money paid" within the meaning of the statute. In re *Progressive Wall Paper Corp.* (1916), 229 Fed. 489.

The issuance of a corporate bond for a price less than its par value does not violate this section since the amendment of 1901 to the original Stock Corporation Law of 1890. *MacQuoid v. Queens Estates* (1911), 143 App. Div. 134, 127 N. Y. Supp. 867.

Bonds pledged as security for a pre-existing debt, must be deemed to have been "issued" within the meaning of this section. In re *Progressive Wall Paper Corp.* (1916), 229 Fed. 489.

Section not repealed by section 55 of Public Service Commissions Law.—This section, permitting stock to be issued for the value of property purchased by a corporation, etc., is not repealed by section 55 of the Public Service Commissions Law, which in substance provides that before a public service corporation may issue stock it must be authorized to do so by the Public Service Commission and the amount of the issue determined. The purpose of the latter statute is to prevent the issue of watered or fictitious securities. *People ex rel. Westchester St. R. R. Co. v. Pub. Serv. Com.* (1913), 158 App. Div. 251, 143 N. Y. Supp. 148, mod. (1914), 210 N. Y. 456, 104 N. E. 952.

§ 56. Liabilities of stockholders.—Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him

for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders of any existing corporation, under any general or special law, excepting laws relating to moneyed corporations, and corporations and associations for banking purposes, on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 54, in part, renumbered and amended by L. 1892, ch. 688, and amended by L. 1901, ch. 354.

The amendment of 1901 to the former law struck out the provision that stockholders shall, jointly and severally, be personally liable to creditors, to an amount equal to the amount of stock held by them, for every debt of the corporation, until the whole amount of the capital stock issued and outstanding at the time the debt was incurred shall have been fully paid. For this double liability, until all other stockholders shall have paid up, the amendment provides that the holder of capital stock "not fully paid" shall be personally liable to an amount "equal to the amount unpaid on the stock" held by him for debts of the corporation contracted, while such stock was held by him. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

Effect of amendment of 1901.—The right of the creditor of an insolvent corporation whose debt was created in 1900, to enforce the joint and several liability of the holders of stock not paid in full, as imposed by this section as it existed when the debt was created, was not affected by the amendatory act of 1901; such an action is governed by the former statute, and the plaintiff may sue one or all or any number of the stockholders. *Lang v. Lutz* (1905), 180 N. Y. 254, 73 N. E. 24, affg. (1903), 83 App. Div. 534, 82 N. Y. 319; *Lancaster v. Knight* (1902), 74 App. Div. 255, 77 N. Y. Supp. 488.

Consolidators' note.—Matter contained in this section was the first part of former § 54 (originally L. 1890, ch. 564, § 57). It has been divided into three sections (§§ 56, 57, 58), with two new headings for the purpose of making its provisions stand out clearly. It is re-enacted without change of wording and its place in article has been changed so as to follow in logical sequence.

References.—When business corporation may incur debts, *Business Corporations Law*, § 3. Enforcement of liability of stockholders, *General Corporations Law*, §§ 110–116.

Construction and effect of section.—*Chase v. Lord* (1879), 77 N. Y. 1; *Barnes v. Wheaton* (1894), 80 Hun 8, 129 N. Y. Supp. 1830; *Close v. Potter* (1898), 155 N. Y. 145, 49 N. E. 686.

When stock "fully paid."—See *Flour City Nat. Bank v. Shire* (1903), 88 App. Div. 410, 84 N. Y. Supp. 410, affd. (1904), 179 N. Y. 587, 72 N. E. 1141.

"Holder of stock;" who is.—The fact that a defendant signed a proxy, a consent to an increase of capital, and a waiver of notice of a special meeting in which he described himself as a stockholder of record is not conclusive evidence that he is a "holder of capital stock" within the meaning of section 56 of the Stock Corporation Law. In an action by a trustee in bankruptcy to recover the amount unpaid upon certain shares of the capital stock of the bankrupt corporation alleged to be held by the defendant, evidence examined, and held, that the question as to whether defendant was a holder of the stock was one of fact. *Breck v. Brewster* (1912), 150 App. Div. 202, 134 N. Y. Supp. 697.

The holder of stock not fully paid is liable to creditors of the corporation, where

he signed the preliminary subscription paper, providing for the organization of the corporation, although he did not sign the certificate itself, and although the certificate gives wider powers to the corporation than those originally contemplated, if he was the owner of lands which the corporation acquired, made loans to it in order that it might improve the property and held himself out as a stockholder. *Lyell Ave. Lumber Co. v. Lighthouse* (1910), 137 App. Div. 422, 121 N. Y. Supp. 802.

Liability under section is contractual.—*Cochran v. Wiechers* (1890), 119 N. Y. 399, 23 N. E. 803, 7 L. R. A. 553; *Marshall v. Sherman* (1895), 84 Hun 186, 32 N. Y. Supp. 193, revd. (1895), 148 N. Y. 9, 42 N. E. 419, 34 L. R. A. 757; *Marshall v. Sherman* (1895), 148 N. Y. 9, 28, 42 N. E. 419, 34 L. R. A. 757; *Flash v. Conn.* (1883), 109 U. S. 371, 27 L. ed. 966, 3 Sup. Ct. 263; *Thompson v. Knight* (1902), 74 App. Div. 316, 77 N. Y. Supp. 599. But issue of certificate of stock is not essential to create relation of stockholder. *Beals v. Buffalo Construction Co.* (1900), 49 App. Div. 589, 63 N. Y. Supp. 635. The liability of stockholders under this section is not limited to the commercial debts of the corporation, but may include a debt incurred by the corporation for professional services rendered by an attorney. *Hallett v. Metropolitan Messenger Co.* (1902), 69 App. Div. 258, 74 N. Y. Supp. 639.

Independent of both statutory and contractual liability, strictly so called, where a shareholder receives stock for which he has subscribed and not paid the par value, there is an implied agreement on his part to make up the deficiency or so much as may be necessary to meet the demands of creditors. *Southworth v. Morgan* (1911), 143 App. Div. 648, 654, 128 N. Y. Supp. 196, revd. (1912), 205 N. Y. 293, 98 N. E. 490, 51 L. R. A. (N. S.) 56.

When liability arises.—A complaint is demurrable where the allegation as to the defendant's indebtedness upon the stock relates to the time when the indebtedness of the corporation to the plaintiff was contracted, and not to the time when the plaintiff recovered judgment against the corporation upon such indebtedness. *Dyer v. Drucker*, 108 App. Div. 238, 95 N. Y. Supp. 749.

Upon the filing of a certificate of incorporation the liability of the subscribers becomes fixed without the formal issuance of stock to them. *Irish Paper Corporation v. White* (1915), 91 Misc. 261, 154 N. Y. Supp. 778.

Actions by creditors.—When a corporation assumes contract of a vendee of lands and agrees to pay the consideration to the vendor, it assumes the debt and the vendor becomes a creditor within the meaning of this section. *Ford v. Chase* (1907), 118 App. Div. 605, 103 N. Y. Supp. 30, affd. (1907), 189 N. Y. 504, 81 N. E. 1164. A single creditor may maintain action in behalf of all, *Pfohl v. Simpson* (1878), 74 N. Y. 137; *Citizens' Bank of Buffalo v. Weinberg* (1899), 26 Misc. 518, 57 N. Y. Supp. 495; *United Glass Co. v. Vary* (1894), 79 Hun 103, 29 N. Y. Supp. 636, affd. (1897), 152 N. Y. 121, 46 N. E. 312; and separate suits may be enjoined. Code Civ. Pro. § 448; *Farnsworth v. Wood* (1883), 91 N. Y. 308, 314. A creditor cannot since 1901 maintain an action for his exclusive benefit. *Lang v. Lutz* (1903), 83 App. Div. 534, 82 N. Y. Supp. 319, affd. (1905), 180 N. Y. 254, 73 N. E. 24. Several actions may be required by the court to be joined. *Bagley & Sewall Co. v. Ehrlicher* (1896), 8 App. Div. 581, 40 N. Y. Supp. 922. Where creditor brings action against a single stockholder, defendant may set off a debt due from the company. *Weeks v. Love* (1872), 50 N. Y. 568; *Christensen v. Colby* (1887), 43 Hun 362, affd. (1888), 110 N. Y. 660, 18 N. E. 480; *Richards v. Kinsley* (1887), 14 Daly 334, 12 N. Y. St. Rep. 125. An action may be maintained for contribution where a single stockholder has been held liable for a debt of the corporation. *Aspinwall v. Sacchi* (1874), 57 N. Y. 331. It must be shown that a valid debt was contracted before the stock was paid in, *National Tube Works Co. v. Gilfillan* (1891), 124 N. Y. 302; and that defendant was owner of stock at the time the debt was accrued. *Tucker v. Gilman* (1890), 121 N. Y. 189, 24 N. E. 302. That defendant

was not owner of the stock within two years prior to commencement of action is a matter of affirmative defense. *Castner v. Duyrea* (1897), 16 App. Div. 249, 44 N. Y. Supp. 708. Section does not apply where creditor was, at the times covered by the action, a director of the corporation. *McDowell v. Sheehan* (1891), 129 N. Y. 200, 29 N. E. 299. That subscription was induced by fraud is no defense to creditor's action. *Moosbrugger v. Walsh* (1895), 89 Hun 564, 35 N. Y. Supp. 550; nor a transfer in violation of § 66. *Sinclair v. Dwight* (1896), 9 App. Div. 297, 41 N. Y. Supp. 193, *affd.* (1899), 158 N. Y. 607, 53 N. E. 510. Action cannot be maintained if charter has expired. *Andrews v. Vanderbilt* (1885), 37 Hun 468. Liability may be enforced by foreign assignee or receiver of a foreign corporation. *Stoddard v. Lum* (1899), 159 N. Y. 265, 53 N. E. 1108, 45 L. R. A. 551, *revg.* (1898), 32 App. Div. 565, 53 N. Y. Supp. 607; *Wigton v. Kenney* (1900), 51 App. Div. 215, 64 N. Y. Supp. 924.

Obligation is personal to creditors.—The obligation imposed upon stockholders under this section is personal to the creditors and can only be enforced in an action by them or by someone directly representing them. Such liability cannot be enforced by the corporation itself or by an assignee for the benefit of creditors of a corporation. *Thompson v. Knight* (1902), 74 App. Div. 316, 77 N. Y. Supp. 599; *Rathbone v. Ayer* (1903), 84 App. Div. 186, 82 N. Y. Supp. 235. Nor by the trustee in bankruptcy, since the liability of stockholders to creditors under this section is not an asset of the corporation. *Beck v. Brewster* (1912), 153 App. Div. 800, 138 N. Y. Supp. 821. The statutory liability of stockholders is not to the corporation or to all creditors, but only to those within prescribed conditions. *Mosler Safe Co. v. Guardian Trust Co.* (1912), 153 App. Div. 117, 138 N. Y. Supp. 298; *Breck v. Brewster*, *supra*.

Parties defendant.—A creditor of a corporation suing in equity on behalf of all creditors of the corporation to enforce the liability of stockholders for unpaid subscriptions to the capital stock must join as defendants all stockholders who are liable under the statute as well as the personal representatives of those who have died, so that they may be compelled to contribute *pro rata* and all creditors may share in the fund recovered. It seems, that if such plaintiff comes into court believing that he has made all stockholders who are liable parties defendant he may, on discovering a defect of parties, obtain leave to bring them in by a supplemental summons and complaint. It would not be essential to make the owner of stock not fully paid a defendant if he be insolvent, bankrupt or without the jurisdiction. *Warth v. Moore Blind Stitcher & Overseamer Co.* (1911), 146 App. Div. 28, 130 N. Y. Supp. 748, *affd.* (1912), 207 N. Y. 673, 100 N. E. 1135.

Action against stockholder in foreign corporation.—An action at law by a single creditor of an insolvent Maryland corporation against a single stockholder to enforce the latter's statutory liability for double the amount of stock at its par value, held by him in such corporation, is not maintainable under this section. *Knickerbocker Trust Co. v. Iselin* (1906), 185 N. Y. 54, 77 N. E. 877. See, *Coulter Dry Goods Co. v. Rosenbaum* (1911), 74 Misc. 579, 134 N. Y. Supp. 487; *Manufacturers' Commercial Co. v. Heckscher* (1911), 144 App. Div. 601, 129 N. Y. Supp. 556, *affd.* (1911), 203 N. Y. 560, 96 N. E. 1121.

Liability of stockholder of foreign corporation, to pay assessments on his stock, is to be determined by the laws of the state of incorporation, and, in the absence of evidence, the common law of such state is presumed to be the same as that of this state. Liability of such stockholder to pay difference between par value of stock and price paid therefor, considered. *Southworth v. Morgan* (1912), 205 N. Y. 293, 98 N. E. 490, 51 L. R. A. (N. S.) 56.

Enforcement of liability for unpaid subscription; defenses.—In an action to enforce the individual liability of a stockholder for unpaid stock, it is no defense that

defendant subscribed for sixty-three shares as shown by his certificate on the understanding that all but five of them were to be transferred to other parties later. After a business corporation has incurred an honest debt, a subscriber to the certificate of incorporation, duly filed, cannot, in an action to enforce the individual liability of a stockholder, be permitted to say that he should not be held liable because (1) he did not pay ten per cent. down on all shares of stock issued to him; (2) he was under no obligation to pay until all the capital stock had been subscribed, or (3) the debts covered by the complaint were not valid debts of the corporation and not enforceable because the whole capital had not been paid in before said debts were incurred. *Irish Paper Corporation v. White* (1915), 91 Misc. 261, 154 N. Y. Supp. 778.

Forfeiture; notice to stockholders.—Where a forfeiture of stock is declared pursuant to this section, it is necessary for the board of directors itself to determine whether the notice requiring the stockholders to make payment within a certain time shall be given and when, in order to make the forfeiture valid. *Matter of N. Y. & Westchester Town Site Co.* (1911), 145 App. Div. 623, 130 N. Y. Supp. 414.

See generally *Stevens v. Episcopal Church History Co.* (1910), 140 App. Div. 570, 125 N. Y. Supp. 575.

§ 57. Liabilities of stockholders to laborers, servants or employees.—The stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 54, in part, as renumbered and amended by L. 1892, ch. 688, and amended by L. 1901, ch. 354.

References.—See notes to § 56. Payment of wages by receiver, Labor Law, § 9; by assignor for benefit of creditors, Debtor and Creditor Law, § 27.

Laborers, servants or employees.—See Labor Law, § 9, for construction of term "employee." It should be observed that the courts have given a broader construction to the term "employee" than to "laborer" or "servant," which were the terms used in the laws from which this section was derived. See *Gurnel v. Atlantic & Gt. Western R. R. Co.* (1874), 58 N. Y. 358. A bookkeeper was held not a "laborer, servant or apprentice," under L. 1848, ch. 40, § 18, in *Wakefield v. Fargo* (1882), 90 N. Y. 214. But see *Farnum v. Harrison* (1915), 167 App. Div. 704, 152 N. Y. Supp. 835, *affd.* (1916), 218 N. Y. 672, 113 N. E. 1055, where a bookkeeper, employed at a weekly salary who, in addition to the usual duties, attended to the banking business of the corporation, answered inquiries in the absence of officers and was at all times subordinate to and under the control and direction of the corporation, was held to be an "employee." *Affd.* (1916), 218 N. Y. 672, 113 N. E. 1055. An agent to take charge of mines was held not within the same classification in *Hill v. Spencer* (1874), 61 N. Y. 274. An attorney is not an "employee" under this section, although regularly employed. *Bristor v. Smith* (1899), 158 N. Y. 157, 53 N. E. 42; *Bristor v. Kretz* (1898), 22 Misc. 55, 49 N. Y. Supp. 404, *affd.* (1899), 158 N. Y. 157, 53 N. E. 42.

Liability of stockholders for costs.—A stockholder cannot be charged with costs incurred in the defense of an action prosecuted against the corporation for dam-

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ages upon causes of action other than that embraced in the statute making him liable. *Card v. Groesbeck* (1912), 204 N. Y. 301, 97 N. E. 728.

The "execution" contemplated by this section, need not be issued out of a court of record; it is sufficient that execution issue out of the court in which the judgment was procured, even though it be an inferior court. *Padros v. Swarzenbach* (1909), 134 App. Div. 811, 119 N. Y. Supp. 589.

§ 58. Non-liability in certain cases.—No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 54, in part, as renumbered and amended by L. 1892, ch. 688, and amended by L. 1901, ch. 354.

Persons holding stock as collateral security are not liable merely because the stock stands in their names upon the stock books of the company, as the stock book is merely presumptive evidence of title which may be rebutted and the character of the ownership shown. *Van Tuyl v. Robin* (1913), 80 Misc. 360, 367, 143 N. Y. Supp. 535, mod. (1913), 160 App. Div. 41, 145 N. Y. Supp. 121, *affd.* (1914), 211 N. Y. 540, 105 N. E. 1101.

§ 59. Limitation of stockholder's liability.—No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 55, as renumbered and re-enacted by L. 1892, ch. 688.

Consolidators' note.—Re-enacted without change, except change of number from 55 to 59, and placed in article changed so as to follow in logical sequence.

References.—Actions for enforcement of liability of stockholders, General Corporation Law, §§ 110-116.

Application of section.—The limitation prescribed by the above section is not confined to actions brought under § 56 of the Stock Corporation Law to enforce

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the liability of stockholders, but is generally related to the liability of stockholders in all stock corporations and applies to an action brought under § 6 of the Business Corporations Law to enforce the liability of a stockholder in a full liability business corporation. *Adams v. Wallace* (1903), 82 App. Div. 117, 81 N. Y. Supp. 848; *Sanford v. Rhoads* (1906), 113 App. Div. 782, 99 N. Y. Supp. 407.

The provisions of this section making liability of stockholders enforceable only after the recovery of judgment against the corporation and the return thereof, applies to the liability of stockholders of a trust company imposed under § 162 of the Banking Law. *Gause v. Boldt* (1906), 49 Misc. 340, 99 N. Y. Supp. 442, *affd.* (1906), 115 App. Div. 897, 100 N. Y. Supp. 1117, *affd.* (1907), 138 N. Y. 546, 80 N. E. 566.

The limitation provided for in this section refers to domestic corporations and will not be applied in an action brought by a receiver to enforce statutory liability of a stockholder of a foreign corporation. *Bernheimer v. Converse* (1907), 206 U. S. 516, 51 L. ed. 1163, 27 Sup. Ct. 755.

The provision of the statute (§ 59) prohibiting the bringing of an action against a stockholder for a debt of the corporation until judgment therefor has been recovered against the corporation and an execution thereon has been returned unsatisfied, in whole or in part, requires a verdict determining the amount of the plaintiff's claim, and the stockholder, when he is called upon to pay, cannot be required to ascertain the amount from estimates and figures made by another as to the various items included by the jury in its verdict. *Card v. Groesbeck* (1912), 204 N. Y. 301, 97 N. E. 728.

Individual liability of stockholders in a corporation organized under chapter 32 of the Laws of 1851. *Leighton v. Leighton Lea Assn.* (1911), 146 App. Div. 255, 130 N. Y. Supp. 935.

Liability accrues when debt becomes due, not at maturity of note given to secure it. *Jagger Iron Co. v. Walker* (1879), 76 N. Y. 521; *Hardman v. Sage* (1891), 124 N. Y. 25, 26 N. E. 354; *Griffeth v. Green* (1891), 37 N. Y. St. Rep. 705, 13 N. Y. Supp. 470, *affd.* (1892), 129 N. Y. 517, 29 N. E. 838.

The two years begins to run from the time payment is due and not from the time the debt is contracted. *Sanford v. Rhoads* (1906), 113 App. Div. 782, 99 N. Y. Supp. 407.

When a corporation assumes the obligation to pay to a vendor of lands the amount due, under a contract for the sale thereof, it is a new obligation and the statute begins to run against the vendor at the time such promise was made. *Ford v. Chase* (1907), 118 App. Div. 605, 103 N. Y. Supp. 30, *affd.* (1907), 139 N. Y. 504, 81 N. E. 1164.

Under this section an action brought by the receiver of an insolvent banking corporation, to enforce the constitutional and statutory liability of the stockholders for the debts of the corporation, must be brought within two years from the time defendants ceased to be stockholders, i. e. from the making of the decree for the dissolution of the corporation. *Smith v. Quale* (1914), 86 Misc. 259, 148 N. Y. Supp. 448.

A judgment against the corporation in this state, and return of execution unsatisfied, are conditions precedent to the maintenance of an action by a creditor, *National Bank of Auburn v. Dillingham* (1895), 147 N. Y. 603, 611, 42 N. E. 338; *Handy v. Draper* (1882), 89 N. Y. 334; *Berwind-White Coal Mining Co. v. Ewart* (1895), 90 Hun 60, 35 N. Y. Supp. 573; *Rocky Mountain Nat. Bank v. Bliss* (1882), 89 N. Y. 338; except (1) where corporation has been dissolved by judicial decree; (2) where by final judgment in action for sequestration a perpetual injunction against creditors' suits has been issued; and (3), where by statute, such suits are prohibited. *United Glass Co. v. Vary* (1897), 152 N. Y. 121, 46 N. E. 312, and cases cited; *Hollingshead v. Woodward* (1887), 107 N. Y. 96, 13 N. E. 621. If judg-

ment is vacated, and after new trial a judgment is entered, execution must be returned on second judgment. *Terry v. Rothschild* (1895), 83 Hun 486, 31 N. Y. Supp. 1119. An allegation that a corporation has been discharged in bankruptcy relieves a party from obtaining a judgment as required by this section. *Firestone Fire & Rubber Co. v. Agnew* (1909), 194 N. Y. 165, 86 N. E. 1116, 24 L. R. A. (N. S.) 628, revg. (1908), 128 App. Div. 518, 112 N. Y. Supp. 907.

Judgment against corporation as evidence.—Under former statute it has been held that it is not even *prima facie* evidence of the amount or validity of the claim. *Cook on Stock & Stockholders* (3d ed.), § 224, and cases cited; *Wheeler v. Miller* (1881), 24 Hun 241, N. Y. Supp. modif. (1882), 89 N. Y. 412; *Kincaid v. Dwinelle* (1875), 59 N. Y. 551; *Truesdell v. Chumar* (1894), 75 Hun 416, 27 N. Y. Supp. 87. It is now held that the liability imposed by statute is of a secondary and exceptional character, and a stockholder should have an opportunity to compel proof of the existence of the claim before he is compelled to pay it. Hence the judgment against the corporation is not conclusive upon stockholders as establishing an indebtedness. *Assets Realization Co. v. Howard* (1914), 211 N. Y. 430, 105 N. E. 680.

And the amendment which provides "and the amount due on such execution shall be the amount recoverable, with costs against the stockholder," means that such amount should be a limitation of liability and not proof of an indebtedness for which the stockholder is liable. *Assets Realization Co. v. Howard* (1914), 211 N. Y. 430, 105 N. E. 680.

Execution need not be out of a court of record.—The court in which the action is brought need not be a court of record nor need the execution be issued out of a court of record or by the county clerk. *Padros v. Swarzenbach* (1909), 134 App. Div. 811, 119 N. Y. Supp. 589.

A trustee in bankruptcy is in the position of a judgment creditor holding an execution duly returned unsatisfied within the meaning of this section of the Stock Corporation Law. *Breck v. Brewster* (1912), 150 App. Div. 202, 134 N. Y. Supp. 697.

As only certain stockholders are made liable to certain creditors, and the corporation itself is given no claim or right of action against stockholders, no right of action passes to a trustee in bankruptcy of the corporation in behalf of its general creditors. *In re Jassoy Co.* (1910), 178 Fed. 515.

The superintendent of banks may enforce the liability of stockholders under the Banking Law without compliance with this section. *Van Tuyl v. Scharmann* (1913), 208 N. Y. 53, 101 N. E. 779; *Van Tuyl v. Sullivan* (1915), 173 App. Div. 391, 156 N. Y. Supp. 309; *Cheney v. Scharmann* (1911), 145 App. Div. 456, 129 N. Y. Supp. 993.

Section cited.—*Mosler Safe Co. v. Guardian Trust Co.* (1912), 153 App. Div. 117, 138 N. Y. Supp. 298.

§ 60. Partly paid stock.—The original or the amended certificate of incorporation of any stock corporation may contain a provision expressly authorizing the issue of the whole or of any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate issued to represent such stock, the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock, and for the payment of indebtedness to employees pursuant to sections fifty-seven, fifty-eight and fifty-nine of this chapter; and in any such case, the corporation may de-

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clare and may pay dividends upon the basis of the amount actually paid upon the respective shares of stock instead of upon the par value thereof.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 62, as added by L. 1901, ch. 354.

Consolidators' note.—Re-enacted without change, except change of number from 62 to 60, and words "fifty-four and fifty-five" referring to section numbers changed to "fifty-seven, fifty-eight and fifty-nine" to conform to division of sections and change in numbering. Place in article changed so as to follow in logical sequence.

§ 61. **Preferred and common stock.**—Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so provides, or

1. By the unanimous consent of the stockholders expressed in writing and filed in the office of the secretary of state and in the office of the clerk of the county in which the principal business office of the corporation is located, or

2. By the consent of the holders of record of two-thirds of the capital stock, given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or a vice-president, and by the secretary or assistant secretary, of the corporation, shall be filed and recorded in the offices where the original certificate of incorporation of such corporation was filed and recorded; and the corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share, but the total amount of such capital stock shall not be increased thereby. (*Amended by L. 1917, ch. 542, in effect May 17, 1917.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 47, as amended by L. 1892, ch. 688, and L. 1901, ch. 354.

The amendment of 1901 to the former law permitted preferred stock to be created by the vote of the holders of two-thirds of the stock, instead of the unanimous consent required by the former law. The right to create preferences with the consent of two-thirds of the stock seems to be of very doubtful constitutionality as to an existing corporation. See *Campbell v. American Zylonite Co.* (1890), 122 N. Y. 455, 25 N. E. 853, 11 L. R. A. 596; *Kent v. Quicksilver Mining Co.* (1879), 78 N. Y. 159. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

The amendment of 1901 applies to a domestic stock corporation organized in 1893 under the Business Corporations Law. *Hinckley v. Schwarzschild & S. Co.* (1905), 107 App. Div. 470, 95 N. Y. Supp. 357, appeal dis. (1908), 193 N. Y. 599, 86 N. E. 1125.

Consolidators' note.—Re-enacted without change, except change of number from 47 to 61, and place in article changed so as to follow in logical sequence.

Right to dividends.—*Boardman v. L. S. & M. S. R. R. Co.* (1881), 84 N. Y. 157; *Prouty v. Same* (1881), 85 N. Y. 272, 277; *Wood v. Lary* (1880), 47 Hun 550.

The earnings of a corporation remain its property until a division is made or a

dividend declared. Until that time whatever interest a stockholder has therein passes with the transfer of his stock as incident thereto. *Robertson v. Brulatour* (1907), 188 N. Y. 301, 80 N. E. 938, affg. (1906), 111 App. Div. 882, 98 N. Y. Supp. 15.

Classification of stock; different classes of preferred stock.—A corporation which is authorized by its charter to issue from time to time preferred stock of one or more classes and classify into preferred and common stock and duly authorized stock of the company, and, thereafter takes advantage of section 61 and divides its authorized increase of capital stock of \$800,000 into \$200,000 common and \$600,000 preferred, is empowered to divide the preferred stock into two classes, known as A and B respectively, the first to bear a preferential dividend of six per cent. per annum and the second seven per cent. per annum. It is unnecessary to state at the time of filing the certificate authorizing such classification with the Secretary of State how much of said \$600,000 shall be apportioned to class A and to class B. This is a matter for the corporation itself to determine by some action on its part thereafter. *Rept. of Atty. Genl. (1914) 92.*

Filing certificate of meeting to classify stock.—The Secretary of State is not required to file in his office a certificate of a meeting of the stockholders of the United Mortgage Company for the purpose of classifying its stock under section 61 of the Stock Corporation Law, when the papers show the capital stock of the corporation is now \$100,000, and that at the meeting a resolution was passed authorizing the corporation to issue \$100,000 additional stock when no proceedings have been taken to increase its capital stock as provided by law. *Rept. of Atty. Genl. (1912) 481.*

Changing the status of preferred stockholders.—A corporation cannot, without the unanimous consent of its common stockholders, increase the rights of the preferred stockholders. *Rept. of Atty. Genl. (1912) 163.*

Formation of fire insurance companies with division of stock into common and preferred is not forbidden by the Insurance Law and is governed by this section. *Rept. of Atty. Genl. (1909) 787.*

§ 62. Increase or reduction of capital stock.—Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 44, as amended by L. 1892, ch. 688; L. 1894, ch. 346; L. 1899, ch. 699, and L. 1901, ch. 354.

The amendment of 1901 to the former law authorized a corporation to increase or reduce its stock, but not above the maximum or below the minimum, if any, prescribed by "general law governing corporations formed for similar purposes," thus enabling corporations limited by special law to avail themselves of the section. The former law limited the maximum or minimum to the amount prescribed "by law." See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

Consolidators' note.—Re-enacted without change, except change of number from 44 to 62, and place in article changed so as to follow in logical sequence.

References.—Increase or reduction where shares are issued without par value, § 22, ante. Fraudulent increase, Penal Law, §§ 661, 664, 667.

Purpose of sections 62, 63, 64.—*Cottrell v. Albany Card & Paper Mfg. Co.* (1911), 142 App. Div. 148, 150, 126 N. Y. Supp. 1070.

What constitutes increase; must be in pursuance of law.—*Einstein v. Rochester Gas & El. Co.* (1895), 146 N. Y. 46, 40 N. E. 631; *Sutherland v. Olcott* (1884), 95 N. Y. 100.

Holders of original stock not liable to pay increased capital. *Veeder v. Mudgett* (1884), 95 N. Y. 295.

Earnings may be distributed by stock dividend, but capital stock cannot be increased for such purpose. *Williams v. Western Union Tel. Co.* (1881), 93 N. Y. 162.

Right to increase not affected by promoters' agreement.—An increase in the capital stock of a corporation for the legitimate uses of the corporation will not be enjoined at suit of one of the two promoters of the corporation, who claims that under an agreement with the other promoter, made prior to the organization of the corporation, he was to have a one-sixth interest therein, and that the proposed increase of stock will defeat such agreement. A corporation is not bound by an agreement made between its promoters prior to its organization, unless ratified by it. *Martin v. Remington-Martin Co.* (1904), 95 App. Div. 18, 88 N. Y. Supp. 573.

To whom increased stock to be issued.—The statute is silent as to whom or the terms upon which the increase of stock shall be issued. These questions are therefore to be determined by the application of common-law principles. The statute confers implied power upon the majority of stockholders to determine whether the stock shall be issued at par, or above par at what may be deemed its actual value in view of the value of the assets of the corporation, the right to ultimately share in which the holders of the new issue of stock will thus acquire. *Stokes v. Continental Trust Co.* (1904), 99 App. Div. 377, 91 N. Y. Supp. 239, revd. (1906), 186 N. Y. 285, 78 N. E. 1090, 12 L. R. A. (N. S.) 969.

Rights of stockholders in respect to new issue of stock.—A stockholder has an inherent right to a proportionate share of new stock issued for money only upon payment of the price fixed therefor in proportion to his holding; he cannot be deprived of this without his consent. *Stokes v. Continental Trust Co.* (1906), 186 N. Y. 285, 78 N. E. 1090, 12 L. R. A. (N. S.) 969, revg. (1904), 99 App. Div. 377, 91 N. Y. Supp. 239.

An increase of the capital stock, part of which is to be preferred, cannot be made without the consent of each of the common stockholders. *Rept. of Atty. Genl.* (1900) 198.

Fraudulent increase of stock.—A stockholder in a corporation has a right to attack and avoid a fraudulent increase of stock made and issued to others for the express purpose and with the clear result of depriving him of his relative position as a stockholder. *Witherbee v. Bowles* (1911), 201 N. Y. 427, 95 N. E. 27.

The words "reduced capital" as used in the phrase "if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital," refer exclusively to capital stock. *Rept. of Atty. Genl.* (1910) 403.

Where stock is reduced surplus of assets only can be distributed. *Strong v. Brooklyn Crosstown R. R. Co.* (1883), 93 N. Y. 426.

Arrears of dividends.—Where a corporation reduces its capital stock under this section, and gives to its stockholders their proportionate number of shares in exchange for their former holdings, the rights of preferred stockholders to dividends which were in arrears prior to such reduction are not affected; they are entitled to their unpaid dividends before any of the surplus profits can be appropriated to a dividend upon the common stock. *Roberts v. Roberts-Wicks Co.* (1906), 184 N. Y. 257, 77 N. E. 13, 3 L. R. A. (N. S.) 1034, revg. (1905), 102 App. Div. 118, 92 N. Y. Supp. 387.

Reduction before authorized stock is fully paid in.—Capital stock may be reduced without payment of the full amount of stock named in the original certificate. *Rept. of Atty. Genl.* (1903) 249.

Insurance company, with the approval of the superintendent of insurance, may reduce its capital stock before its authorized stock has been fully paid in. *Rept. of Atty. Genl.* (1895) 64.

Purchase by a bank of its own capital stock does not reduce such stock. Corporation has no implied authority to increase or diminish its capital stock. *Rept. of Atty. Genl.* (1895) 340.

§ 63. **Notice of meeting to increase or reduce capital stock.**—Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of the secretary of state and in the office of the clerk of the county in which the principal business office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by the president or a vice-president and the secretary, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last-known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 45, as amended by L. 1892, ch. 688; L. 1893, ch. 700, and L. 1901, ch. 354.

The amendment of 1901 to the former law authorized the consent to be expressed unanimously in writing or by a vote at a meeting. The former law required the vote at a meeting.

Consolidators' note.—Re-enacted without change, except change of number from 45 to 63, and place in article changed so as to follow in logical sequence.

Reduction of capital stock must be strictly in accordance with the law, but the members may waive the statutory requirements as to an increase. *Rept. of Atty. Genl.* (1895) 173, *Rept. of Atty. Genl.* (1893) 84.

Votes of stockholders.—This section does not attempt to regulate who may vote but provides for the amount of stock that must be represented by the voters to bring about the reduction. The stockholders effecting such reduction must own a majority of the capital stock of the corporation, not simply of the capital

stock of a class of stockholders, even though such class has the voting power. Rept. of Atty. Genl. (1909) 323.

§ 64. **Conduct of such meeting; certificate of increase or reduction.**— If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous consent of stockholders expressed in writing signed by them or duly authorized proxies, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation, shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, a duplicate thereof in the office of the secretary of state, and, if a corporation formed under or subject to the banking law, a triplicate thereof in the office of the superintendent of banks, and if an insurance corporation, a triplicate thereof in the office of the superintendent of insurance. In case of a reduction of the capital stock, except of a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders, as the case may be, shall have indorsed thereon the approval of the public service commission having jurisdiction thereof, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid, has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro rata, at such times and in such man-

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ner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment. (*Amended by L. 1913, ch. 305.*)

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 46, as amended by L. 1892, ch. 688; L. 1893, ch. 700; L. 1901, ch. 354; L. 1902, ch. 286, and L. 1904, ch. 123.

The amendment of 1901 to the former law merely conformed the section to the changes made in §§ 62, 63.

Consolidators' note.—Re-enacted without change, except change of number from 46 to 64, and place in article changed so as to follow in logical sequence.

A certificate of a proceeding presented for filing, should state the amount of the capital stock theretofore authorized, the proportion thereof actually issued, and in case of a reduction, the whole amount of ascertained debts and liabilities. *Atty. Genl. Opin. (1915), 5 State Dep. Rep. 464.*

The purpose of requiring the "amount of the ascertained debts and liabilities" to be stated, where the capital is sought to be reduced, is to show that the reduction does not violate the limitation of section 62, that the amount of the debts and liabilities shall not exceed the amount of the reduced capital. *Atty. Genl. Opin. (1915), 5 State Dep. Rep. 464.*

A statement that the whole amount of the ascertained debts and liabilities is less than the amount to which the capital stock is sought to be reduced, is a sufficient compliance with the statute. *Atty. Genl. Opin. (1915), 5 State Dep. Rep. 464.*

§ 65. Change in par value of shares.—The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 56, as added by L. 1893, ch. 196, and amended by L. 1901, ch. 354.

The amendment of 1901 to the former law made no change in substance. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

Consolidators' note.—Re-enacted without change, except heading changed from "Increase or reduction of number of shares" to "Change in par value of shares," which means the same thing, and obviates any confusion with sections relating to increase or reduction of capital stock. Number changed from 56 to 65, and place in article changed so as to follow in logical sequence.

References.—Manner of conducting meeting, §§ 62–64, ante. Corporations having stock without par value, §§ 19–24, ante.

§ 66. Prohibited transfers to officers or stockholders.—No corporation which shall have refused to pay any of its notes or other obligations, when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any

other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its solvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid, except that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void. No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business, and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valuable consideration without notice. Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 48, as amended by L. 1892, ch. 688, and L. 1901, ch. 354.

The amendment of 1901 to the former law added the exception that laborers' wages for services shall be preferred claims, and the provision prohibiting general assignments by railroad, banking or insurance corporations. See L. 1901, ch. 354, § 5, which saved rights pending when the amendment of 1901 took effect.

Consolidators' note.—Re-enacted without change, except change of number from 48 to 66, and place in article changed so as to follow in logical sequence.

References.—Actions against officers for frauds in transfers of stock, General Corporation Law, §§ 90–92.

Application of this section is limited to such corporations as have failed to pay their notes or other obligations. Hence, where the complaint, in an action brought by a judgment creditor of a corporation against its directors for alleged violations of this section, fails to allege that at the time of alleged preferences the corporation had refused to pay any of its notes or other obligations, and no such claim

is made, orders granting the motions of the respective defendants for judgment on the pleadings will be affirmed. *Cæsar v. Bernard* (1913), 79 Misc. 224, 139 N. Y. Supp. 974, *revd. on other grounds* (1913), 156 App. Div. 736, 141 N. Y. 668, 669.

Provision prohibiting transfer of stock applies only as to person injured, not as between transferor and transferee. *Sinclair v. Dwight* (1896), 9 App. Div. 297, 41 N. Y. Supp. 193, *affd.* (1899), in 158 N. Y. 607, 53 N. E. 510.

The design and purpose of this section being to secure equality among creditors, a creditor cannot by means of the right of action given by this section be permitted to gain a preference which another creditor is prohibited from getting directly from the debtor by the same law. *Trustees of Masonic Hall v. Fontana* (1917), 99 Misc. 497, 164 N. Y. Supp. 370.

This section is designed to protect creditors against collusive transfers to officers, and is no bar to an assignment of a claim by a corporation to its president, where he sues to enforce the same solely for the benefit of the corporation itself. *Sanders v. Barnaby* (1916), 173 App. Div. 244, 159 N. Y. Supp. 579.

At common law, and except as forbidden by statute, an insolvent debtor had the right to prefer one creditor over others. *Grandison v. Robertson* (1915), 220 Fed. 985.

Policy of the state, so far as domestic corporations are concerned, has for many years favored a *pro rata* distribution of the assets in case of insolvency. *Matter of Boncker Co. v. Callahan Co.* (1916), 218 N. Y. 321, 113 N. E. 257.

Construed generally.—*Milbank v. de Riesthal* (1894), 82 Hun 537, 31 N. Y. Supp. 522; *Cole v. Millerton Iron Co.* (1892), 133 N. Y. 164, 30 N. E. 847; *O'Brien v. East River Bridge Co.* (1900), 161 N. Y. 539, 56 N. E. 74, 48 L. R. A. 122, *revg.* (1898), 36 App. Div. 17, 55 N. Y. Supp. 206; *Gill v. Bell's Knitting Mills* (1908), 128 App. Div. 691, 113 N. Y. Supp. 90.

Transfers in contemplation of insolvency.—*Olney v. Baird* (1896), 7 App. Div. 95, 40 N. Y. Supp. 202; *Dutcher v. Importers' & Traders' Nat. Bank* (1874), 59 N. Y. 5; *Paulding v. Chrome Steel Co.* (1884), 94 N. Y. 334; *New Britain Nat. Bank v. A. B. Cleveland Co.* (1895), 91 Hun 447, 36 N. Y. Supp. 387, *affd.* (1899), 158 N. Y. 722, 53 N. E. 1128. Provision applies to a transfer by corporation itself. *Munson v. Genesee Iron & Brass Works* (1899), 37 App. Div. 203, 55 N. Y. Supp. 837, 56 N. Y. Supp. 139. The word "obligations" does not include open running accounts for services rendered to the corporation. *Munzinger v. United Press* (1900), 52 App. Div. 338, 65 N. Y. Supp. 194.

Elements of preference.—In order to constitute a preference under this section, it must appear (1) that at the time of the payment the corporation was insolvent, or that its insolvency was imminent; (2) that the payment was made (not received) with the intent of giving a preference to a particular creditor over other creditors of the corporation. *Grandison v. Robertson* (1915), 220 Fed. 985, S. C. 231 Fed. 785, 790.

Judgments constituting preferential transfer.—*French v. Andrews* (1895), 145 N. Y. 441, 40 N. E. 214; *Braem v. Merchants' Nat. Bank* (1891), 127 N. Y. 508, 28 N. E. 597; *Varnum v. Hart* (1890), 119 N. Y. 101, 23 N. E. 183; *Inglehart v. Thousand Islands Hotel Co.* (1888), 109 N. Y. 454, 17 N. E. 358; *Spellman v. Looschen* (1900), 162 N. Y. 268, 56 N. E. 741, *revg.* (1898), 31 App. Div. 94, 52 N. Y. Supp. 543; *Ridgeway v. Symons* (1896), 4 App. Div. 98, 38 N. Y. Supp. 895; *Cummings v. American Gear & Spring Co.* (1895), 87 Hun 598, 34 N. Y. Supp. 541; *Milbank v. de Riesthal* (1894), 82 Hun 537, 31 N. Y. Supp. 522; *Kingsley v. First Nat. Bank of Bath* (1884), 31 Hun 329; *Dickson v. Mayer* (1890), 35 N. Y. St. Rep. 482, 12 N. Y. Supp. 651; *Lodi Chemical Co. v. Pleasants* (1898), 25 Misc. 97, 54 N. Y. Supp. 668. Section does not prevent creditors, knowing of insolvency, enforcing valid claims. *Home Bank v. J. V. Brewster & Co.* (1897), 15 App. Div. 338, 44 N. Y. Supp. 54; *Varnum v. Hart* (1890),

119 N. Y. 101, 23 N. E. 183. Stockholder having valid claim against corporation may assign to pay bona fide creditor, and assignee's judgment against corporation is not a preferential transfer. *Jefferson Co. Bank v. Townley* (1899), 159 N. Y. 490, 54 N. E. 74.

Preferential transfers; decisions generally.—*Cole v. Millerton Iron Works* (1892), 133 N. Y. 164, 30 N. E. 847; *Throop v. Hatch Lithographing Co.* (1891), 125 N. Y. 530, 26 N. E. 742; *Rossmann v. Seaver* (1898), 22 Misc. 661, 51 N. Y. Supp. 91, *affd.* (1899), 41 App. Div. 603, 58 N. Y. Supp. 677; *Lopez v. Campbell* (1900), 163 N. Y. 340, 75 N. E. 501, *revg.* *Lopez v. Merchants & Farmers' Nat. Bank* (1897), 18 App. Div. 427, 46 N. Y. Supp. 91; *Jones v. Blun* (1895), 145 N. Y. 333, 39 N. E. 954; *Third Nat. Bank of Buffalo v. Elliott* (1887), 42 Hun 121, *affd.* (1889), 114 N. Y. 622, 21 N. E. 416; *McQueen v. New* (1895), 87 Hun 206, 33 N. Y. Supp. 802; *King v. Union Iron Co.* (1890), 33 N. Y. St. Rep. 545, 11 N. Y. Supp. 603; *Berwind-White Coal Mining Co. v. Ewart* (1895), 11 Misc. 490, 32 N. Y. Supp. 716, *affd.* (1895), 90 Hun 60, 35 N. Y. Supp. 573; *Converse v. Sharp* (1899), 37 App. Div. 399, 55 N. Y. Supp. 1080, *affd.* (1900), 161 N. Y. 571, 56 N. E. 69; *Hurd v. New York & Com. Steam Laundry Co.* (1900), 52 App. Div. 467, 65 N. Y. Supp. 125, *revd.* (1901), 167 N. Y. 89, 60 N. E. 327.

Preferential transfers; decisions construing section.—An assignment of a judgment by a corporation as collateral security for the payment of a debt, made at a time when the corporation was insolvent, is not within the condemnation of the above section, where it appears that such assignment was made in pursuance of a verbal agreement made between the parties at a time when the corporation was solvent. *Matter of Rogers Construction Co.* (1903), 79 App. Div. 419, 79 N. Y. Supp. 444, *affd.* (1903), 175 N. Y. 509, 67 N. E. 1089.

Where, at the time a chattel mortgage was given, the corporation had not refused to pay any of its obligations, and it was not given with the intention of preferring the mortgagee, but with the honest intention of enabling the corporation to continue business, such chattel mortgage is not void under this section. *Swan v. Stiles* (1904), 94 App. Div. 117, 87 N. Y. Supp. 1089.

Proof that a corporation organized for building houses, which, though heavily indebted, is not actually insolvent, has in good faith transferred certain of its real estate to its chief stockholder in settlement of claims for materials furnished by him under contracts with the corporation, does not establish fraud which warrants the setting aside of such conveyance as in fraud of a judgment creditor of the corporation subsequent in point of time to the transfer. *Gordon v. Southgate Building Co.* (1905), 109 App. Div. 838, 96 N. Y. Supp. 717.

Although this section prohibits a preference by an insolvent corporation without regard to the creditor's knowledge of the insolvency, yet if such creditor holding security given in the regular course of business, and not in contemplation of insolvency, releases such security, on payment in full of his claim, he is entitled to protection. *Wright v. Gansévoort Bank* (1907), 118 App. Div. 281, 103 N. Y. Supp. 548.

A trust company holding notes of a corporation indorsed by a perfectly good indorser and secured by the transfer to it of certain property, having subsequently surrendered possession of the notes and thereby lost the security of the indorsement, cannot upon such corporation being subsequently adjudged a bankrupt be compelled to return the property under the provisions of this section. *Perry v. Van Norden Trust Co.* (1908), 192 N. Y. 189, 84 N. E. 804, *revg.* (1907), 118 App. Div. 288, 103 N. Y. Supp. 543.

Payment of a debt by an insolvent corporation on the day before a petition in bankruptcy was filed against it with intent to prefer a creditor is voidable. *Wright v. William Skinner Mfg. Co.* (1908), 162 Fed. 315.

An assignment by a corporation of an account for goods sold and delivered to one of its officers and stockholders does not violate this section in the absence of proof that the corporation was insolvent or that its insolvency was imminent. *Weiser v. Marmalax Mfg. Co.* (1916), 95 Misc. 530, 159 N. Y. Supp. 671.

A mortgage given by a corporation to secure its guaranty of the bonds of another corporation previously issued is not void, where such mortgage was given pursuant to an antecedent agreement made in good faith and for a valuable consideration at the time of the guaranty and when the guarantor was not insolvent nor its insolvency imminent, although it was insolvent when the mortgage was executed and may have intended to give the mortgagee preference over other creditors. *Gay v. Hudson River Electric Power Co.* (1911), 190 Fed. 773.

A chattel mortgage authorized by a corporation in financial difficulty prior to but actually executed after the receipt of a loan of money by an officer and director, which was actually delivered to the corporation, is not a preference under this section. *Matter of Metropolitan Dairy Co.* (1915), 224 Fed. 444.

A chattel mortgage given under such circumstances as constituted it a purchase money mortgage, contained a covenant to renew every year during the term thereof. The mortgagor transferred the chattels to a corporation which accepted the title thereto subject to the lien of the mortgage and under a covenant on its part to renew, and executed a new mortgage in compliance therewith. The court held that the new mortgage was not in violation of this section, since the renewal of the mortgage must be construed as relating back to and simply effectuating the contractual obligation originally assumed. *Black v. Ellis* (1910), 197 N. Y. 402, 90 N. E. 958 affg. (1908), 129 App. Div. 140, 113 N. Y. Supp. 558.

Where a bank held mortgages upon the real property of a brewing company, some of whose officers and directors were connected with the bank and its attorneys, and the brewing company, with the knowledge and assistance of the bank, sold all its real and personal property and paid up all its indebtedness except to the bank and to one other creditor, and paid all the remaining proceeds of such sale to the bank, which proceeds were insufficient, however, to pay the indebtedness to the bank in full, such transaction is within the prohibition of this section. *Abrams v. Manhattan Consumers Brewing Co.* (1910), 68 Misc. 166, 123 N. Y. Supp. 663, revd. on other grounds (1911), 142 App. Div. 392, 126 N. Y. Supp. 844.

A pledge of a jewel by an agent of a corporation is not invalidated by the provision of this section forbidding corporations which have not paid their obligations when due from transferring property to officers in payment of any debt, etc., when the pledge is not made to an officer, but to a third person who advanced money thereon. *Wood v. Simpson* (1912), 149 App. Div. 471, 133 N. Y. Supp. 1069.

The test of insolvency is a general inability on the part of the corporation to pay its obligations as they become due in the regular course of business. The mere fact that the assets of a corporation are less than its liabilities does not necessarily constitute insolvency. *Abrams v. Manhattan Consumers Brewing Co.* (1911), 142 App. Div. 392, 396, 126 N. Y. Supp. 844.

Void assignment.—An assignment by a corporation of certain mortgages and liquor tax certificates to director creditors four months before filing a petition in bankruptcy, but when such corporation was in reality insolvent, is void. In *re Salvator Brewing Co.* (1910), 183 Fed. 910.

It seems that the provision of this section invalidating assignments by an insolvent corporation for the purpose of giving a preference to a particular creditor, makes such assignment voidable in part, where claims, which are apparently enforceable, were assigned in payment of a debt of a smaller amount. The plaintiff establishes a *prima facie* case for the setting aside of such assignment in its entirety by showing the inadequacy of the consideration and that an attorney who incorporated the assignor was also an officer and stockholder of the

assignee. *Kemp v. Able Realty Maintenance Co.* (1916), 174 App. Div. 242, 160 N. Y. Supp. 1055.

Appropriation of assets by officer with knowledge of corporation's insolvency.—An officer of a corporation, with knowledge of its insolvency, cannot by a book-keeping entry appropriate property of the corporation to pay a debt due him. Such attempted payment is in violation of this section. *Rock Island Butter Co. v. Freeman* (1913), 83 Misc. 7, 144 N. Y. Supp. 317.

Payment to president for services after failure to pay rent due.—Where a hotel company has failed to pay certain instalments of rent due under its lease, a subsequent payment to its president for services as manager is a violation of this section, and the amount so paid may be recovered in an action by the receiver of the company. But in such an action it is proper to allow the president a certain amount for the rent of rooms and board to which he was entitled under his agreement for services, and such amount, having been returned, may be deducted from the recovery. *Montague v. Hotel Gotham Co.* (1912), 149 App. Div. 687, 133 N. Y. Supp. 954.

Payment of its entire assets by an insolvent stock corporation to a single creditor, while largely indebted to others, constitutes an illegal preference under this section. *Montague v. Hotel Gotham Co.* (1913), 208 N. Y. 442, 102 N. E. 513, revg. (1912), 149 App. Div. 942, 133 N. Y. Supp. 1133.

Intent to create preference.—The mere fact that a corporation is shown to be unable to pay all its debts, does not necessarily render a payment or transfer by it in the usual course of business ineffectual. In order to constitute a preference under this section, the corporation or its officers making payment must have known or expected that it would have that effect. Where a corporation transfers all its live assets and discontinues its business, an intent to give a preference may be inferred. *Cardozo v. Brooklyn Trust Co.* (1915), 228 Fed. 333.

In order to avoid an assignment of property under this section, where the assignee is not an officer or director or stockholder of the corporation making the assignment, it must be alleged and proved that when the assignment was made the corporation was insolvent, or its insolvency was imminent, and that the assignment was made with the intent of giving a preference to a particular creditor. The fact that the corporation is insolvent, or that its insolvency is imminent at the time of an assignment to a creditor, does not require the avoidance of the assignment, in the absence of a finding of an intent to prefer. *Dill & Collins Co. v. Morison* (1913), 159 App. Div. 583, 144 N. Y. Supp. 894; *Abrams v. Manhattan Consumers Brewing Co.* (1911), 142 App. Div. 392, 396, 126 N. Y. Supp. 844.

An intent to prefer a creditor cannot be inferred from the fact alone that the corporation was insolvent and known to be so by its officers; but where a corporation so situated made payments only to its officers and to a single creditor to which it paid notes not yet due, using practically all of its cash for such purposes, and leaving other creditors unpaid, the facts unexplained are sufficient to establish such intent. *Irish v. Citizens' Trust Co.* (1908), 163 Fed. 880.

The intent to give a preference which invalidates a payment under this section must be determined as of the time the transaction occurred, without regard to later events. *Howland v. Metropolitan Bank* (1915), 228 Fed. 542.

Intent to prefer must be proved by direct evidence, or inferred as the necessary consequence of other acts clearly proved. *Wills v. Venus Silk Glove Manufacturing Co.* (1915), 170 App. Div. 352, 156 N. Y. Supp. 115.

A payment is void under this section if made with an intent to give a preference without reference to the state of mind of the party who receives the payment. *Grandison v. National Bank of Rochester* (1915), 220 Fed. 981.

A company adopted a resolution to assign to its president as collateral security

for the endorsement of a note accounts receivable, and thereafter the president endorsed the note and subsequently the accounts were assigned to him and the proceeds deposited in a bank to his credit in a collateral account, and thereafter were applied by him on the note due to the bank. Suit by the trustee in bankruptcy of the company to recover such payments. Evidence examined and *held*, that the payments were made with an intent to create a preference within the meaning of this section, and that they may be recovered. *Grandison v. Robertson* (1915), 220 Fed. 985.

Actions arising from violation of section.—Remedies against corporation must be exhausted, unless corporation has been dissolved. *Bartlett v. Drew* (1874), 57 N. Y. 587; *Hastings v. Drew* (1879), 76 N. Y. 9; *Hetzel v. Tanne Hill Silver Mining Co.* (1877), 4 Abb. N. C. 40. Judgment against corporation as evidence of liability. *Sturgis v. Vanderbilt* (1878), 73 N. Y. 384. Action by one creditor to set aside transfer does not entitle him to priority. *Lodi Chemical Co. v. Nat. Lead Co.* (1899), 41 App. Div. 535, 58 N. Y. Supp. 717. Failure of receiver to give notice to debtors does not preclude action. *Stiefel v. N. Y. Novelty Co.* (1898), 25 Misc. 221, 55 N. Y. Supp. 90. Stockholder not a creditor cannot maintain action under section to set aside judgment. *Matter of Gardner* (1895), 86 Hun 30, 33 N. Y. Supp. 326. Receiver is not confined to an equitable action to recover property wrongfully transferred. *McQueen v. New* (1899), 45 App. Div. 579, 61 N. Y. Supp. 464.

An accounting to ascertain the loss to a creditor by transfers in violation of this section is not necessary before maintaining an action for such loss, as the loss may be proved on the trial. *Pennsylvania R. R. Co. v. Pedrick* (1916), 234 Fed. 781, 786.

When action maintained; pleading.—An action under this section may be maintained against one who, as a director, voted to authorize the execution of a mortgage in violation of the statute, and as secretary of the corporation executed the necessary papers, and who personally benefited by receiving a preferential payment. It is not necessary to allege that the corporation has refused to pay its notes or other obligations when due. A creditor of a corporation may maintain such action against directors and officers although his claim was not reduced to judgment at the time of the illegal transfer. *Cesar v. Bernard* (1913), 156 App. Div. 724, 141 N. Y. Supp. 659, 688, *affd.* (1914), 209 N. Y. 570, 103 N. E. 1122.

Complaint; sufficiency of allegations.—*Agnelli v. Shatzin* (1910), 68 Misc. 329, 123 N. Y. Supp. 997; *Ginsberg v. Automobile Coaching Co.* (1912), 151 App. Div. 627, 136 N. Y. Supp. 354; *Kiendi v. Cochrane* (1912), 153 App. Div. 802, 138 N. Y. Supp. 630.

Foreign corporations not under section.—*Matter of Hulbert Bros. & Co.* (1898), 38 App. Div. 323, 57 N. Y. Supp. 38, *revd.* (1899), 160 N. Y. 9, 54 N. E. 571; *Worthington v. Pfister Book-Binding Co.* (1893), 3 Misc. 418, 23 N. Y. Supp. 295; *Lane v. Wheelwright* (1893), 69 Hun 180, 23 N. Y. Supp. 576, *affd.* (1894), 143 N. Y. 634, 37 N. E. 826; *Hill v. Knickerbocker El. Lt. & Power Co.* (1892), 45 N. Y. St. Rept. 761, 18 N. Y. Supp. 813; *Standard Nat. Bank v. Garfield Nat. Bank* (1900), 56 App. Div. 43, 67 N. Y. Supp. 472. Assignments by. *Vanderpoel v. Gorman* (1894), 140 N. Y. 563, 35 N. E. 932, 24 L. R. A. 548; *Matter of Halsted* (1899), 42 App. Div. 101, 58 N. Y. Supp. 898; *Barth v. Backus* (1893), 140 N. Y. 230, 35 N. E. 425, 23 L. R. A. 47.

General assignments may be made by corporations, except banking, insurance or railroad. *Vanderpoel v. Gorman* (1894), 140 N. Y. 563, 35 N. E. 932, 24 L. R. A. 548; *Home Bank v. Brewster* (1896), 17 Misc. 442, 41 N. Y. Supp. 203, *modfd.* (1897), 15 App. Div. 338, 44 N. Y. Supp. 54; *Koechl v. Leibinger & Oehm Brewing Co.* (1898), 24 Misc. 298, 52 N. Y. Supp. 982; *Mulzinger v. United Press* (1900), 52

App. Div. 338, 65 N. Y. Supp. 308; when will be set aside. *Creteau v. Foote & Thorne Glass Co.* (1900), 54 App. Div. 168, 66 N. Y. Supp. 370.

Duties and liabilities of officers and directors.—The officers and directors of an insolvent corporation are not at liberty, without liability to the creditors, to take its assets and convert them to their own use in payment of the debts of the corporation to themselves and a few of the creditors, and especially on debts of the corporation, where they personally are endorsers. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

Directors who vote for preferential transfers with knowledge of the corporation's insolvency and with intent to give a preference are "concerned in" the illegal transfers and liable, although they had no personal pecuniary interests to serve. *Pennsylvania R. R. Co. v. Pedrick* (1916), 234 Fed. 781, 784.

There is an implied contract on the part of the directors and officers of a corporation to at least use reasonable care and diligence to see to it that the assets of the corporation are not dissipated or wasted or misapplied or applied to payment of their own individual claims against the corporation when it is insolvent, or its insolvency is imminent, and this fact is known to them, in preference to the satisfaction of the claims and demands of other creditors of the corporation. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

Inducing officers of corporation to unlawfully transfer assets.—An officer of a corporation may, without acting officially, violate this section by inducing other officers to transfer assets of the corporation in violation of law either to themselves or to another, especially where he derived a benefit therefrom. It is sufficient to charge such officer with being "concerned" in the illegal disposition of corporate property where it is alleged that he advised, ratified, approved and assented to the illegal transfer, and through its execution received payment of a note of the corporation held by him. *Cæsar v. Bernard* (1913), 156 App. Div. 737, 141 N. Y. Supp. 669, *affd.* (1913), 209 N. Y. 570, 103 N. E. 1122.

Officers who aid and abet an illegal and prohibited use of the assets of the corporation are equally liable with those who procure a part or the whole of the assets as a preferential payment. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

Extent of liability.—This section, prohibiting certain transfers to officers or stockholders of a corporation, makes the directors and officers making the transfers personally liable to creditors not for the debts of the corporation but so far as is necessary to indemnify creditors "to the full extent of any loss" sustained through the violation of the statute. If the corporation retains sufficient assets to discharge its obligations to creditors, the latter sustain no loss. The loss is measured by the amount which could not be satisfied by execution in consequence of a violation of the statute. *Cæsar v. Bernard* (1913), 156 App. Div. 724, 141 N. Y. Supp. 659, 688, *affd.* (1914), 209 N. Y. 570, 103 N. E. 1122.

The "loss" which a creditor may recover under this section is the sum he would have received had the corporation been wound up and its property, so far as improperly transferred, converted to money and applied to the payment of its debts *pro rata*. *Pennsylvania R. R. Co. v. Pedrick* (1916), 234 Fed. 781, 786.

Purchaser for valuable consideration.—Where a corporation took up a note before maturity and paid part of the same and gave a new note for the balance, with the same individual indorsers, it was *held* that the holder of the new note gave a valuable consideration for the part payment. *Howland v. Metropolitan Bank* (1915), 228 Fed. 542.

A trustee in bankruptcy may recover a preferential transfer made in violation of this section. *Grandison v. National Bank of Rochester* (1916), 220 Fed. 981;

Grandison v. Robertson (1915), 220 Fed. 985; *Cardozo v. Brooklyn Trust Co.* (1915), 228 Fed. 333.

Trustee in bankruptcy may sue in equity, by virtue of section 91-a of the General Corporation Law, to set aside preferential payments by officers and directors of a domestic corporation to creditors, one of whom was a director and officer, when the corporation was insolvent. *Sherwood v. Holbrook* (1917), 98 Misc. 668, 163 N. Y. Supp. 326, *affd.* (1917), 178 App. Div. 462, 165 N. Y. Supp. 514.

Remedy of injured creditor; action at law.—An injured creditor is not bound to seek or enforce his remedy through the medium of a creditor's or stockholder's or trustee's suit in equity for an accounting, but may bring an independent action to recover the damages which he has sustained. A suit for an accounting would seem to be one to reach the specific property or its proceeds, while the other is a direct action to recover judgment for the damages sustained by reason of the wrongful acts of the directors or officers. *Pennsylvania R. R. Co. v. Pedrick* (1915), 222 Fed. 75.

The statute being remedial, a creditor has a direct cause of action against directors for the loss sustained. *Pennsylvania R. R. Co. v. Pedrick* (1916), 234 Fed. 781, 784.

Supplementary proceedings may be maintained against domestic corporations by judgment creditors, but a receiver cannot be appointed in such proceedings. *Matter of Boncker Co. v. Callahan Co.* (1916), 218 N. Y. 321, 113 N. E. 257.

Jurisdiction of Municipal Court.—The Municipal Court of the City of New York has jurisdiction of an action brought by a judgment creditor of an insolvent corporation against its directors for making a transfer of all its property prohibited by this section. *Trustees of Masonic Hall v. Fontana* (1917), 99 Misc. 497, 164 N. Y. Supp. 370.

Section cited.—*Donohue v. City Water Power Co.* (1913), 159 App. Div. 776, 779, 144 N. Y. Supp. 923.

§ 67. **Application to court to order issue of new in place of lost certificate of stock.**—The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides; or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 50, as amended by L. 1892, ch. 688.

L. 1909, ch. 61.

Stock and stockholders.

§ 68.

Consolidators' note.—Re-enacted without change, except change of number from 50 to 67, and place in article changed so as to follow in logical sequence.

Constitutional.—*Matter of Hayt* (1902), 39 Misc. 356, 79 N. Y. Supp. 845.

Refusal of corporation.—A proceeding will not lie under this and the succeeding section to compel a corporation to issue a new certificate of stock in place of one alleged to have been lost or destroyed, unless there has been a distinct refusal by the corporation to issue such certificate. A mere general inquiry of the corporation as to the requirements of its by-laws in relation to the issuance of new certificates is not a sufficient demand. If it appear that the certificate of stock alleged to have been lost was assigned by the holder thereof, notice should be given either personally or by publication to the record owner of the stock. *Matter of Coats* (1902), 75 App. Div. 469, 78 N. Y. Supp. 425.

Remedy cumulative.—Equitable action may also be maintained. *Kinnan v. Forty-second St. R. R. Co.* (1893), 140 N. Y. 183, 35 N. E. 498.

Evidence.—Application for the issue of a new in the place of a lost certificate of stock should not be granted without evidence of the facts alleged in the verified petition, especially where the corporation has interposed an answer denying any knowledge or information sufficient to form a belief as to each and every allegation contained in the petition, except the allegation that the certificate claimed to have been lost or destroyed had originally been issued. Where there is no direct evidence that the certificate had been actually lost or destroyed, notice of the application should be given by such publication thereof as will furnish any one claiming an interest in the stock an opportunity to appear and be heard. *Matter of Speir* (1902), 69 App. Div. 149, 74 N. Y. Supp. 555. See also *Matter of Biglin* (1887), 46 Hun 223.

§ 68. **Order of court upon such application.**—Upon the return of the order, with proof of due service thereof, the court shall in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and can not after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; but such provision requiring security to be deposited or bond filed is to be construed as excluding an application made by a domestic municipal corporation or by a public officer in behalf of such corporation; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, but in any application under the provisions of this chapter, in which a domestic municipal corporation or a public officer in behalf of such corporation, shall be by the foregoing provisions of this

section excused from depositing security or filing a bond, such municipal corporation shall be liable for all damages that may be sustained by any person, in the same case and to the same extent as sureties to a bond or undertaking would have been, if such a bond or undertaking had been filed; and the corporation issuing such certificate shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 51, as re-enacted by L. 1892, ch. 688, and amended by L. 1905, ch. 35.

Consolidators' note.—Re-enacted without change, except change of number from 51 to 68, and place in article changed so as to follow in logical sequence.

§ 69. **Financial statement to stockholders.**—Stockholders owning five per centum of the capital stock of any corporation other than a moneyed corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 52, as amended by L. 1892, ch. 688.

Consolidators' note.—Re-enacted without change, except change of number from 52 to 69, and place in article changed so as to follow in logical sequence.

Reference.—Making false statement, a misdemeanor, Penal Law, § 665.

Who is entitled to statement.—Stockholder of record at time of demand. The stock-book is ordinarily the treasurer's guide and authority in furnishing statements. *Tighe v. Lavery* (1917), 98 Misc. 245, 162 N. Y. Supp. 1005. Directors who are also stockholders. *Townsend v. Davis* (1912), 153 App. Div. 599, 138 N. Y. Supp. 758. Pledgee of stock who is not a stockholder of record, not entitled, especially where treasurer had no knowledge that stock had been pledged. *Pray v. Todd* (1902), 71 App. Div. 391, 75 N. Y. Supp. 947.

Detailed statement of assets and liabilities is sufficient. *French v. McMillan* (1887), 43 Hun 188.

Verified statement must be furnished, although not demanded. *St. John v. Eberlin* (1898), 23 Misc. 585, 51 N. Y. Supp. 998; *McCrea v. Bedell* (1894), 9 Misc. 372, 29 N. Y. Supp. 705. But acceptance of unverified statement without objection

is a waiver. *Sutton v. MacBride* (1917), 176 App. Div. 362, 162 N. Y. Supp. 1023.

Defect in statement may be waived by stockholder's conduct after demand made. *Sutton v. MacBride* (1917), 176 App. Div. 362, 162 N. Y. Supp. 1023.

Request under this section necessary as basis of mandamus action to examine books of account. *People ex rel. Clason v. Nassau Ferry Co.* (1895), 86 Hun 128, 33 N. Y. Supp. 244.

Sufficiency of request for account of assets and liabilities.—Where a stockholder in a letter to the treasurer of his corporation did not ask for a "particular account of all the corporation's assets and liabilities," but while asking for certain other information upon subjects not within the statute at all requested a "statement" of the assets and liabilities of the corporation, the treasurer in an action against him to recover a penalty under this section is entitled to a judgment for the dismissal of the complaint. *Troughton v. Grace* (1914), 84 Misc. 577, 147 N. Y. Supp. 993.

Complaint; sufficiency of allegations.—In an action by a stockholder, under this section, a complaint which fails to allege that defendant has not delivered a financial statement to plaintiff, or to some other stockholder, during the fiscal year within which the demand was made, and which simply alleges, as a violation of this section, that there was a demand and failure to comply therewith, is demurrable. *Troughton v. Grace* (1912), 151 App. Div. 655, 136 N. Y. Supp. 200.

Proof.—In order to maintain an action to recover a penalty under this section plaintiff must prove that defendant was the "treasurer or chief fiscal officer" of a corporation other than a moneyed corporation at the time he made his demand for a statement of its assets and liabilities. *Tighe v. Lavery* (1917), 98 Misc. 245, 162 N. Y. Supp. 1005.

§ 70. Liabilities of officers, directors and stockholders of foreign corporations.—Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends;
2. Unlawful loans to stockholders;
3. Making false certificates, reports or public notices;
4. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened;
5. The failure to file an annual report.

Such liabilities may be enforced in the courts of this state, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations.

Source.—Former Stock Corp. L. (L. 1890, ch. 564) § 60, as added by L. 1897, ch. 384.

Consolidators' note.—Subdivision 2 should be repealed, as it relates to a liability for the creation of unauthorized and excessive indebtedness. There is no longer any liability of this nature upon officers of domestic corporations and liabilities upon officers of foreign corporations are by the terms of the section intended to be the same as domestic. Otherwise the section is re-enacted without change, except change of number from 60 to 70, and place in article changed so as to follow in logical sequence.

References.—Liability of domestic corporations, §§ 23-28, 29, 34, 35, 66; Penal Vol. VII—63

§§ 80, 81.

Laws repealed.

L. 1909, ch. 61.

Law, §§ 664, 665, 667. Enforcement of liability of stockholders and directors of corporations, General Corporation Law, §§ 110-116.

Unauthorized dividends.—The legislature has the power not only to make the wrongful act of directors of a foreign corporation in declaring a dividend except from the surplus or the net profits from its business an offence against our laws, but to give the right of action therefor to the corporation itself. The legislature meant by this section to extend to foreign corporations transacting business in this state the prohibitions in respect to dividends that earlier sections of the same statute had already laid on domestic corporations and to establish an offence against our laws, not merely to declare that there should be a remedy here for an offence against the home laws. When a foreign corporation comes into this state and transacts its business here, it must yield obedience to our laws, and violation of a condition may be made to impose a liability on the directors who violate it. Hence, directors of a foreign corporation, transacting business in this state and subjecting itself to the conditions established by our laws, may be charged with liability if they declare dividends from capital. *German-American Coffee Co. v. Diehl* (1915), 216 N. Y. 57, 109 N. E. 875, revg. (1915), 167 App. Div. 928, 152 N. Y. Supp. 1113.

See *Hutchinson v. Stadler* (1903), 85 App. Div. 424, 83 N. Y. Supp. 509; *De Raismes v. United States Litho. Co.* (1914), 161 App. Div. 781, 146 N. Y. Supp. 813; *Johnson v. Nevins* (1914), 87 Misc. 430, 150 N. Y. Supp. 828.

Survival of action for illegal declaration of dividends.—An action to recover damages for the alleged illegal declaration of dividends by a foreign corporation survives the death of the defendant. *German-American Coffee Co. v. Johnston* (1915), 168 App. Div. 31, 153 N. Y. Supp. 866.

ARTICLE V.

LAWS REPEALED; WHEN TO TAKE EFFECT.

Section 80. Laws repealed.

81. When to take effect.

§ 80. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Consolidators' note.—The Stock Corporation Law, as originally enacted in 1890, contained its own separate schedule of laws repealed, but upon the revision in 1892, the schedule was incorporated into the schedule of the General Corporation Law, as was that of the Business Corporations Law. This article is made necessary by change in the form of the present corporation laws to conform to the scheme of consolidation which requires each general law to have its own repealing schedule.

§ 81. **When to take effect.**—This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1814	12	All	1830	71	All
(38th Sess.)			1848	145	All
1825	325	1-3, 12	1853	176	All
1828	20	15,	1853	425	All
¶¶ 17, 18 (2d Meet.)			1853	460	All
1828	21	1,	1869	742	7
¶ 180 (2d Meet.)			1875	392	8

L. 1909, ch. 61.

Consolidators' notes.

LAWS OF	CHAPTER	SECTION	LAWS OF	CHAPTER	SECTION
1884	434	All	1901	130	All
1889	57	All	1901	354	All
1890	564	All	1902	80	All
1892	337	All	1902	98	All
1892	688	All	1902	286	All
1893	196	All	1902	601	All
1893	638	All	1903	320	All
1893	700	All	1904	123	All
1894	346	All	1904	307	All
1896	929	All	1904	706	All
1896	932	1,	1905	35	All
pt. adding § 58 to L. 1892, ch. 688			1905	415	All
1897	384	All	1905	489	All
1899	354	All	1905	745	All
1899	696	All	1905	750	All
1900	128	All	1905	751	All
1900	164	All	1906	238	All
1900	476	All			

CONSOLIDATORS' NOTES TO SCHEDULE OF REPEALS.

When a statute has been specifically repealed, that statute and the repealing statute are given without explanatory note.

R. S., pt. 1, ch. 18, tit. 4, § 4.—L. 1880, ch. 245, repealed last portion of section from last semi-colon to end. L. 1882, ch. 402, § 1, subd. 39, repealed this section, but the repeal is stricken out by L. 1884, ch. 434, which had the effect of reviving the section, at least from 1884 to its repeal in 1890.

L. 1881, ch. 231, § 19.—This section authorizes incorporation of companies for manufacture of salt. Its purposes are sufficiently provided for in the Business Corporations Law and it is obsolete.

L. 1828 (3d meet.), ch. 20, § 15, ¶¶ 17, 18.—These paragraphs add certain sections to R. S., pt. 1, ch. 18, tit. 4. The portions of the Revised Statutes affected have already been repealed (L. 1892, ch. 687, § 34) and these paragraphs are inoperative and obsolete.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1853, ch. 176.—This act empowers any railroad corporation to purchase the stock of the Whitehall & Plattsburgh R. R. Co. It is unnecessary and obsolete for the reason that § 52 of the proposed law (former § 40 authorizes corporations to purchase stock of other corporations. Further, there is no such railroad now in existence as the railroad mentioned. All rights are saved by the General Construction Law.

L. 1853, ch. 425.—This act empowers any railroad corporation to purchase the stock of the Sodus Point & Southern R. R. Co. It is obsolete and unnecessary for the reasons stated under L. 1853, ch. 176.

L. 1853, ch. 460.—This act empowers any railroad corporation to purchase the stock of the Attica & Allegany Valley R. R. Co. It is obsolete and inoperative for the reasons stated under L. 1853, ch. 176.

L. 1875, ch. 392, § 8.—This section imposes upon stockholders a liability for debts due to laborers or servants in substantially the same terms as the Stock Corporation Law, § 54, as it was formerly. The provisions of that section (proposed law, § 57) now govern such liabilities and are exclusive, and the act is therefore inoperative and obsolete.

L. 1884, ch. 434.—This act amends an act which repeals portions of the Revised Statutes, pt. 1, chs. 18 and 20. It is obsolete for the reason that the portions of the Revised Statutes affected have been repealed.

L. 1892, ch. 688.—This act amended generally the original Stock Corporation Law of 1890, ch. 564. Sections 2-4, 6, 7, 20, 21, 23, 29, 30, 32, 40, 42, 44-48, 51, 53, 54 have been amended "so as to read as follows" and superseded. Sections 24 and 49 were repealed by L. 1901, ch. 354, § 4. The remainder of the act, being the amendments to §§ 1, 5, 22, 25-28, 31, 41, 43, 50, 52, 55 is consolidated in Stock Corporation Law as §§ 1, 5, 11, 27, 29-31, 35, 51, 53, 54, 59, 67, 69.

L. 1897, ch. 384.—Section 2 was amended "so as to read as follows" and superseded by L. 1901, ch. 354, § 1. Remainder of act is consolidated in Stock Corporation Law, §§ 14, 33, 70.

Former § 34, added by L. 1899, ch. 354, § 1, is recommended for repeal and therefore should be omitted. This section limits liability of directors and officers

Cross-references.

to creditors for creation of excessive indebtedness and failure to file an annual report under the circumstances set forth. Former § 24 which imposed a liability for excessive indebtedness which this section limits was repealed by L. 1901, ch. 354, § 4. Of course, if the statutory liability which the section limits has been repealed, there is no further use for a limitation of a liability which does not exist. The same is true as to liability to creditors for failure to file an annual report. There is no longer any liability to creditors for failure to file an annual report, and there is, consequently, no need of a limitation of any such liability. Section 34 (former § 30) in its present form provides only for a penalty to the people and not to creditors, and that only after notice to file a report has been served. Thus, the liability which this limitation was intended to affect has been repealed. (The above note is included by consolidators in notes to text, but seems more properly included in notes to repeals. Editors.)

L. 1899, ch. 354.—Recommended for repeal for the reason assigned in preceding note.

L. 1900, ch. 164.—This act authorizes corporations which have filed certificates setting forth that a certain proportion of their stock has been paid in, and a deficit in such amount so certified has been found to exist, to make good such deficit within six months from the time the act takes effect. Such six months have long elapsed. The act was temporary and is now obsolete.

L. 1901, ch. 130.—Section 1 is consolidated in Stock Corporation Law, §§ 16, 17. Section 2 is a saving clause of any pending action or proceeding and is provided for in General Construction Law.

L. 1901, ch. 354.—This act amends many sections of the Stock Corporation Law and adds two sections. So much of § 1 as amends §§ 2, 3, 20, 30, 32, 46 are superseded respectively by L. 1905, ch. 745 § 1; 1902, ch. 80, § 1; 1906, ch. 238, § 1; 1905, ch. 415, § 1; 1905, ch. 751, § 1, and 1902, ch. 286, § 1, which amend "so as to read as follows." Remainder of § 1 and §§ 2 and 3 are consolidated in Stock Corporation Law, §§ 7, 10, 12, 28, 32, 55-58, 60-63, 65, 66. Section 4 repeals §§ 24 and 49 and may be repealed, as these sections are repealed by the Consolidated Law. Section 5 is a saving clause of pending actions and proceedings and of rights of creditors asserted within six months from the time the act takes effect. It is temporary in part and the remainder is covered by General Construction Law.

L. 1902, ch. 80.—So much of § 1 as amends L. 1890, ch. 564, § 3, subd. 3, was "amended to read as follows" and superseded by L. 1904, ch. 706, § 1. Remainder of act is consolidated in Stock Corporation Law, § 9.

L. 1902, ch. 98.—Consolidated in Stock Corporation Law, § 15.

L. 1902, ch. 601.—Consolidated in Stock Corporation Law, §§ 8, 50, 52.

L. 1904, ch. 123.—Consolidated in Stock Corporation Law, § 64.

L. 1904, ch. 706.—Consolidated in Stock Corporation Law, § 9, subd. 3.

L. 1905, ch. 35.—Consolidated in Stock Corporation Law, § 68.

L. 1905, ch. 415.—Consolidated in Stock Corporation Law, § 34.

L. 1905, ch. 489.—Consolidated in Stock Corporation Law, § 13.

L. 1905, ch. 745.—Consolidated in Stock Corporation Law, § 6.

L. 1905, ch. 750.—Consolidated in Stock Corporation Law, § 26.

L. 1905, ch. 751.—Consolidated in Stock Corporation Law, § 18.

L. 1906, ch. 238.—Consolidated in Stock Corporation Law, § 25.

STOCK EXCHANGE.

Delivery to customers of memoranda; Penal Law, § 957. Trading by brokers against customers' orders; Penal Law, § 954. Transactions by brokers after insolvency; Penal Law, § 955. Hypothecation of customers' securities; Penal Law, § 956. Discrimination by exchanges or members; Penal Law, § 444. Publishing fictitious transactions in securities; Penal Law, § 951. False advertisements as to securities; Penal Law, § 952. Manipulation of price of securities; Penal Law, § 953.

STOCK TRANSFERS.

Tax on; Tax Law, §§ 270-280.

STOCK YARDS.

Included under jurisdiction of public service commission; Public Service Commissions Law, §§ 2, 5.

L. 1882, ch. 303.

Summary proceedings in New York city.

§ 1.

STOLEN PROPERTY.

Disposition of, in custody of peace officer; Code Crim. Pro. §§ 685-691. Buying or receiving; Penal Law, § 1308.

STONY POINT.

See Historic Places.

SUFFOLK COUNTY.

L. 1915, ch. 267.—An act to cede to the town of Smithtown, Suffolk county, all the right, title and interest of the state in lands adjacent to such town between high and low water marks, for the protection of clamming, and to repeal chapter four hundred and forty-two of the laws of nineteen hundred and fourteen. Omitted as local.

SUICIDE.

Definition and punishment of attempted; Penal Law, §§ 2300-2306.

SUMMARY PROCEEDINGS.

To recover possession of real property; Code Civ. Pro. §§ 2231-2265.

L. 1882, ch. 303.—“An act in relation to summary proceedings to remove monthly tenants in the cities of New York and Brooklyn for holding over.”

Notice to tenant.—§ 1. No monthly tenant shall hereafter be removed from any lands or tenements * in the city of New York or in the city of Brooklyn on the grounds of holding over his term (except when the same expires on the first day of May) unless at least five days before the expiration of the term the landlord or his agent serves upon the tenant, in the same manner in which a summons in summary proceedings is now allowed to be served by law, a notice in writing to the effect that the landlord elects to terminate the tenancy, and that, unless the tenant removes from said premises on the day on which his term expires, the landlord will commence summary proceedings under the statute to remove such tenant therefrom. (*Amended by L. 1889, ch. 357.*)

SUNDAY.

Penal regulations as to sports, amusements and labor on; Penal Law, §§ 2140-2152. Contracts with Sunday papers valid, Gen. Business Law, § 333. Barbering prohibited except in certain places; Penal Law, § 2153. Processions and parades; Penal Law, § 2151. One day of rest in seven, law regulating, see Labor Law, § 8-a.

SUPERVISORS.

See Town Law.

SUPERVISORS, BOARD OF.

See County Law.

SUPPLEMENTARY PROCEEDINGS.

See Code Civ. Pro. §§ 2432-2471.

SUPREME COURT.

General provisions relating to; Judiciary Law, §§ 2-31. Appellate Division; Judiciary Law, §§ 70-118. Judicial districts; Judiciary Law, § 140. Compensation;

* So in original.

§§ 1, 2.

Additional justices.

L. 1911, ch. 874.

terms of court, etc.; Judiciary Law, §§ 140-170. Duties of officers in certain counties; Judiciary Law, §§ 230-233. Appointment, salaries and duties of clerks; Judiciary Law, §§ 250-288. Stenographers; Judiciary Law, §§ 290-319. Attendants and messengers; Judiciary Law, §§ 340-354. Criers; Judiciary Law, §§ 360-366. Interpreters; Judiciary Law, §§ 380-388. Reporter; Judiciary Law, §§ 439-445.

(1) *Erection of ninth district.*

L. 1906, ch. 294.—“An act to divide the second judicial district into two judicial districts, to be known as the second judicial district and the ninth judicial district.”

Section 1 repealed by L. 1909, ch. 35, the Judiciary Law, which see.

§ 2. The justices of the supreme court now resident in the second judicial district, hereby constituted, shall be considered to be justices in said second judicial district.

§ 3. The justices of the supreme court now resident in the ninth judicial district, hereby constituted, shall be considered to be justices in said ninth judicial district.

Section 4 repealed by L. 1909, ch. 35, the Judiciary Law, which see.

(2) *Additional justices.*

L. 1906, ch. 693.—“An act to increase the number of justices of the supreme court in the first, second and ninth judicial districts of the state and to provide additional justices therein.”

Section 1. From and after the first day of January, nineteen hundred and seven, there shall be additional justices of the supreme court in the first, second and ninth judicial districts of the state and the number of justices now existing for said several districts is hereby increased accordingly, as follows, to wit: In the first judicial district eight additional justices, in the second judicial district seven additional justices, in the ninth judicial district three additional justices.

§ 2. The additional justices herein provided for shall first be elected at the general election held in the month of November, nineteen hundred and six, and shall severally take office on the first day of January, nineteen hundred and seven.

L. 1911, ch. 874.—An act to increase the number of justices of the supreme court of the first judicial district of the state, and to provide for additional justices therein.

§ 1. There shall be two additional justices of the supreme court in the first judicial district of the state, so that, when all of such additional justices have been elected and have taken office as hereinafter provided, the whole number of justices in said district shall be thirty-two, and the number of justices now existing therein shall be thereby increased accordingly.

§ 2. One of the additional justices herein provided for shall first be elected at the general election held in the month of November, in the year nineteen hundred and eleven, and one at such election in the year nineteen hundred and twelve, and each justice so elected shall take office on the first day of January next succeeding his election.

L. 1906, ch. 694.

Additional justices.

§§ 1, 2.

§ 3. Such additional justices shall receive the compensation provided by law for justices of the supreme court, and a vacancy in said office of justice hereby created, whether by death, resignation or expiration of term, shall be filled in the same manner, and at the same time as in the case of any justice of the supreme court.

L. 1911, ch. 830.—An act to increase the number of justices of the supreme court in the second judicial district of the state, and to provide for additional justices therein.

§ 1. From and after the first day of January, nineteen hundred and twelve, there shall be three additional justices of the supreme court in the second judicial district of the state, and the number of justices now existing therein is hereby increased accordingly.

§ 2. The additional justices herein provided for shall first be elected at the general election held in the month of November, nineteen hundred and eleven, and shall take office on the first day of January, nineteen hundred and twelve.

L. 1916, ch. 591.—An act to increase the number of justices of the supreme court in the third judicial district, and to provide for an additional justice therein.

§ 1. From and after the first day of January, nineteen hundred and seventeen, there shall be an additional justice of the supreme court in the third judicial district of the state of New York, and the number of justices now existing for such district is hereby increased accordingly.

§ 2. The additional justice herein provided for shall first be elected at the general election held in the month of November, nineteen hundred and sixteen, and shall take office on the first day of January, nineteen hundred and seventeen.

§ 3. All vacancies in such office whether by death, resignation or expiration of term shall be filled in the same manner and at the same time as in the case of any justice of the supreme court.

L. 1906, ch. 694.—“An act to provide for an additional justice of the supreme court in and for the fifth judicial district.”

§ 1. The supreme court of the fifth judicial district shall consist of the justices now in office and of one additional justice, and their successors. Such additional justice shall be chosen at the next general election and shall take his office on January first, nineteen hundred and seven.

§ 2. Such additional justice shall receive the compensation provided by law for justices of the supreme court, and may appoint a confidential clerk under the provisions of section eight hundred and ninety-three of the laws of eighteen hundred and ninety-six, as amended.

L. 1906, ch. 695.—“An act to increase the number of justices of the supreme court in the eighth judicial district of the state, and to provide for additional justices therein.”

§§ 1-3.

Additional justices.

L. 1915, ch. 645.

§ 1. From and after the first day of January, nineteen hundred and seven, there shall be two additional justices of the supreme court in the eighth judicial district of the state so that the whole number of justices in said district shall be twelve, and the number of justices now existing therein is hereby increased accordingly.

§ 2. The additional justices herein provided for shall first be elected at the general election held in the month of November, nineteen hundred and six, and shall take office on the first day of January, nineteen hundred and seven.

§ 3. All vacancies in said office of justice hereby created, whether by death, resignation or expiration of term, shall be filled in the same manner, and at the same time as in the case of any justice of the supreme court.

L. 1916, ch. 165.—An act to increase the number of the justices of the supreme court in the eighth judicial district of the state, and to provide for additional justices therein.

§ 1. There shall be two additional justices of the supreme court in the eighth judicial district of the state so that the whole number of justices in such district shall be fourteen and the number of justices now existing therein is hereby increased accordingly.

§ 2. There shall be elected in the eighth judicial district at the general election to be held in the month of November, nineteen hundred and sixteen, two additional justices of the supreme court, each of whom shall take office on the first day of January, nineteen hundred and seventeen.

§ 3. Any vacancy in the office of justice of the supreme court, hereby created, shall be filled in the same manner and at the same time as in the case of vacancy in the office of any justice of the supreme court.

L. 1915, ch. 645.—An act to increase the number of justices of the supreme court in the ninth judicial district of the state of New York, and to provide additional justices therein.

§ 1. From and after the first day of January, nineteen hundred sixteen, there shall be two additional justices of the supreme court in the ninth judicial district of the state of New York, and the number of justices now existing for said district is hereby increased accordingly.

§ 2. The additional justices herein provided for shall first be elected at the general election held in the month of November, nineteen hundred and fifteen, and shall severally take office on the first day of January, nineteen hundred and sixteen.

§ 3. All vacancies in such office hereby created, whether by death, resignation or expiration of term, shall be filled in the same manner and at the same time as in the case of any justice of the supreme court.

(3) *Appellate Division; first department.*

L. 1895, ch. 553.—“An act in relation to the supreme court in the first judicial district and the appellate division thereof in the first department.”

Buildings for court; stationery.—§ 1. Any building, room or premises built, procured or hired in accordance with law, for the use of the appellate division of the supreme court in the first department, and for the use of the supreme court in the first judicial district shall be deemed a part of the city hall of the city of New York for the purpose of holding therein the appellate division of the supreme court in the first department and the terms of the supreme court in the first judicial district, and the commissioners of the sinking fund of said city shall lease, on behalf of the city and county of New York, such building, rooms or premises as the justices of the said appellate division now appointed shall designate for the use of said appellate division, and for the use of the supreme court in the first judicial district, and the commissioner of public works of said city shall cause the said building, rooms or premises to be altered, prepared or arranged for the use of the said appellate division and the justices thereof, and for the use of the supreme court in the first judicial district, according to such plans as shall be adopted by the said justices of the appellate division, or by the presiding justice thereof, and shall procure such furniture and other fittings therefor as shall be required by such justices or by the said presiding justice. The commissioner of public works shall also cause such alteration to be made in the rooms and premises of the county courthouse, now occupied by the supreme court, the superior court and the court of common pleas, as the said presiding justice of such appellate division may direct, and shall procure such furniture and other fittings suitable to such rooms and premises when thus altered as said presiding justice may direct. The expenses necessary to carry these provisions into effect shall be paid by the city and county of New York; and the comptroller of said city shall issue revenue bonds of said city for the purpose of providing for such expenses and the amount necessary to pay the principal and interest of such bonds shall be included in the final estimate of the amount necessary to be raised by taxation for the purpose of the government of said city for the ensuing year. All stationery which may from time to time be required for the said appellate division and for the supreme court and the justices thereof shall also be furnished to the said courts and justices by the commissioner of public works of the city of New York, upon the direction of the presiding justice of the said appellate division, and the expense thereof shall be paid by the city and county of New York.

Acquisition of site for court-house and erection thereof; custody.—§ 2. If, in the opinion of the majority of the justices of the appellate division of the supreme court in the first department who now have been or who may hereafter be appointed, it shall be expedient to purchase a site and

erect thereon a building within the city of New York for the purpose of a courthouse of the said appellate division of the supreme court in the first department, said justices, or a majority thereof, shall so certify the fact to the commissioners of the sinking fund in said city, who shall, upon said request, take the necessary steps for acquiring a site for the said courthouse and for the erection thereof. The plans for the building to be erected upon said site when acquired, shall be prepared under the direction of the said commissioners of the sinking fund and shall be submitted to and approved by a majority of the justices of the appellate division of the supreme court in the first department. Except as herein provided, the proceedings for the acquirement of the site for said buildings, and for the erection thereof, together with provision for the payment of all the expense of said acquirement and erection shall be had in accordance with the provisions of the procedure provided by chapter forty-three of the laws of eighteen hundred and ninety-two, entitled "An act to provide for the construction of a public building in the city of New York," as amended by chapter forty-four of the laws of eighteen hundred and ninety-four, except that the amount of the expense of the erection of said building shall be such as is advisable and expedient in the judgment of the said commissioners of the sinking fund. The building erected under chapter one hundred and ninety-six of the laws of eighteen hundred and ninety-seven is hereby constituted the courthouse of the appellate division of the supreme court in the first department, and shall be under the control and supervision of the justices thereof. Said justices are hereby authorized to appoint a custodian of said building, who shall be janitor thereof, and such engineers, cleaners and other persons as in their opinion shall be necessary for the preservation, safety and care thereof. The custodian of said building shall, under the direction of the said justices have general charge thereof and of the records, books and papers therein, so far as may be necessary to preserve and protect the same, and shall be responsible to them for the preservation thereof, and shall, with the approval in writing of the said justices or a majority of them, purchase the supplies necessary for the maintenance of the building, and for lighting, heating and keeping the said building and furniture therein in repair and with the approval of such justices make necessary contracts therefor. The engineers, cleaners and other persons who shall be appointed pursuant to this section, other than the custodian of the said building, shall be selected by the said justices in pursuance of such rules as may from time to time be prescribed in regard thereto by the state civil service commission.

Sections 3-5 repealed by L. 1909, ch. 35, the Judiciary Law, which see.

Transfer of existing deputy clerks.—§ 6. The justices of the appellate division in the first department, now or hereafter appointed, or a majority of them, may transfer any of the deputy clerks of the superior court or of the court of common pleas to the supreme court, and upon such transfer the said deputy clerks shall become special deputies to the clerk of

L. 1911, ch. 855. Retirement of employees; appellate department.

§§ 11, 1.

the city and county of New York as if appointed by the said justices of the appellate division under the fourth section of this act. Either of the judges of the superior court or of the court of common pleas may, on or before December thirty-first, eighteen hundred and ninety-five, transfer any judge's clerks or attendants from either of said courts to the supreme court. The number of attendants so transferred by any one of the said judges shall not exceed four, and the judge's clerk and attendants so transferred shall be the judge's clerk and attendants whom each of said justices has authority to appoint by virtue of the fifth section of this act.

Sections 7-10 repealed by L. 1909, ch. 35, the Judiciary Law, which see.

Duties of officers.—§ 11. Each of the officers hereinbefore named shall perform such additional duties as the said appellate division shall direct and be subject to such rules and regulations as shall be made by the said appellate division. The court clerks, justices' clerks, attendants, crier, interpreter, librarian and stenographers of the supreme court at present in office shall continue until removed. The said justices of the appellate division, now or hereafter to be appointed, are authorized to apportion the attendants and justices' clerks so continued among the justices elected to the supreme court, with like effect upon subsequent removals and appointments as though such justices' clerk and four attendants assigned to each justice had been appointed by such justice under the original power of appointment conferred upon each of the justices of the supreme court elected or transferred by this act. (*Amended by L. 1895, ch. 959.*)

Sections 12-17 repealed by L. 1909, ch. 35, the Judiciary Law, which see.

Section 18 repeals inconsistent acts.

Section 19, time of taking effect.

(4) Retirement of employees by appellate division, first department.

L. 1911, ch. 855.—An act authorising the justices of the appellate division of the supreme court in the first department to retire employees for incapacity and providing for their compensation.

§ 1. The appellate division of the supreme court in the first department is hereby authorized in its discretion to retire any clerk, assistant clerk, clerk to a justice, stenographer, typewriter, interpreter, librarian, assistant librarian, crier, assistant crier, telephone operator or attendant who shall have served as such in the said appellate division or in the supreme court in and for the first judicial district or in any court which has been consolidated with the said supreme court or as an appointee of a justice of said court or courts, or who has had charge of the records of any such court in the office of the clerks of the counties of New York and Bronx, and who shall have become physically or mentally incapacitated for the further performance of the duties of his position, provided however that such person shall have been employed prior to such retirement for at least twenty years in the aggregate in one or more of such positions heretofore mentioned or provided that such person immediately prior to such retirement shall have been employed continuously for at least ten

§ 2.

Retirement of employees; appellate department. L. 1911, ch. 855.

years in one or more of such positions and in addition thereto shall have also served or been employed at any time prior thereto in one or more places or positions in any court, department or office of the state or of the county or city of New York, or as an appointee of a justice of said court or courts provided however that such combined employment shall aggregate at least twenty years. Any person or persons retired from service pursuant to this section shall be paid out of the funds apportioned to the supreme court of the first department an annual sum for annuity to be determined by said appellate division but not exceeding one-half of the average amount of his annual salary or compensation for a period of two years preceding the time of such retirement. Such annuity shall be paid in equal monthly installments during the lifetime of the person or persons so retired. (*Amended by L. 1912, ch. 486, L. 1913, ch. 138, L. 1914, ch. 497, and L. 1916, ch. 480.*)

§ 2. Any clerk, assistant clerk, clerk to a justice, stenographer, typewriter, interpreter, librarian, assistant librarian, crier, assistant crier, telephone operator or attendant who shall have served as such in the said appellate division or in the supreme court in and for the first judicial district or in any court which has been consolidated with the said supreme court in and for the first judicial district, or as an appointee of a justice of said court or courts, or who has had charge of the records of any such court in the office of the clerks of the counties of New York and Bronx who shall have been employed for at least twenty-five years in the aggregate in one or more of such positions or who shall have immediately prior to retirement been employed continuously for at least twelve and one-half years in one or more of such positions and in addition thereto shall have also served or been employed at any time prior thereto in one or more places or positions in any court, department or office of the state or of the county or city of New York, or as an appointee of a justice of such court or courts, provided however that such combined employment shall aggregate at least twenty-five years, shall upon his own application in writing to the appellate division of the supreme court in the first department be retired by the said appellate division and shall be awarded, granted and paid an annual sum for annuity equal to one-half of the average amount of his annual salary or compensation for a period of two years preceding the time of such retirement. Any employee heretofore mentioned in this act who after twenty years' service in the manner heretofore prescribed in section one of this act loses his said position or employment without any fault or misconduct on his part, shall be retired by said appellate division as of the date of the loss of his position or employment, provided, however, the said employee so losing his position or employment shall have within one full calendar month after the loss of such position or employment, made, or had application made on his behalf in writing to the said appellate division for such retirement, and shall be awarded, granted and

L. 1911, ch. 855. Retirement of employees; appellate department.

§ 2.

paid an annual sum for annuity equal to as many twenty-fifths of one-half of the average amount of his annual salary or compensation for a period of two years preceding the date of the loss of his position or employment as he has served aggregate years. Such annuity shall be paid in equal monthly installments during the lifetime of the person or persons so retired. Any person or persons retired from service pursuant to this section of this act shall be paid out of the funds apportioned to the supreme court of the first department, and from the contributions to the retirement fund in such manner as the said appellate division shall provide by order upon such retirement. No employee in service at the time this act takes effect shall be retired pursuant to this section unless within one full calendar month after this act takes effect he shall have signified his intention in writing to the said appellate division that he desires to take advantage of this act. The said appellate division shall forthwith upon receipt of such notice or notices forward to the comptroller of the city of New York the names of all persons who have signified their intention to take advantage of this section pursuant to the provisions thereof. The comptroller of the city of New York shall at the end of the second full calendar month after this act takes effect and at the end of each full calendar month thereafter deduct and retain monthly from the salary or compensation of each employee entitled to take advantage of this section who has signified in the manner aforesaid his intention to take advantage thereof, and of each employee entitled to take advantage of this section who may hereafter be employed or appointed, one per centum of his monthly salary. Such moneys so deducted or retained as aforesaid shall by the said comptroller be paid into what shall be known as the retirement fund, which fund and all moneys which shall form a part thereof as hereinafter provided, or thereafter accrue to it, shall be held by said comptroller for the purposes of this section with his usual powers of disposition and investment, subject, however, to the direction, control and approval of the said appellate division. All moneys paid to the appellate division prior to the passage of this act pursuant to section two of chapter one hundred and thirty-eight of the laws of nineteen hundred and thirteen shall be paid or caused to be paid by the said appellate division to the said comptroller of the city of New York within three months after this act takes effect and upon receipt thereof by said comptroller he shall pay all such moneys into the said retirement fund, and upon said payment such moneys shall be deemed a part of such fund for the purpose of this act. Every person to whom this section applies who shall have signified his intention to take advantage thereof, who shall continue in his employment after this act takes effect, as well as every person to whom this section applies, who may hereafter be employed or appointed to a position or place, shall be deemed to consent and agree to the deduction made and provided for herein and shall receipt in full for his salary or compensation and such payment shall be a full and complete discharge and acquit-

§§ 1, 2.

Violation of tax warrants.

L. 1917, ch. 470.

tance of all claims or demands whatsoever for the services rendered by such person during the period covered by such payment. (*Added by L. 1913, ch. 138, and amended by L. 1914, ch. 497, and L. 1916, ch. 480.*)

(5) *Special terms, Jamestown and Olean.*

L. 1902, ch. 274.—An act to authorize the holding of special terms of Supreme Court in the cities of Jamestown and Olean.

§ 1. The justices of the appellate division of the supreme court in the fourth judicial department may, in their discretion, in addition to the terms of the supreme court appointed by them to be held at the court-houses in the counties of Chautauqua and Cattaraugus, appoint special terms of the supreme court, to be held as follows: At a designated place in the city of Jamestown and in the village of Fredonia, both in the county of Chautauqua; and in the city of Olean in the county of Cattaraugus, and assign justices to hold the same. At such special terms all business may be transacted and cases tried and heard which do not require the attendance of a jury. (*Amended by L. 1908, ch. 37, L. 1913, ch. 449 and L. 1916, ch. 75.*)

SURROGATES.

Election, appointment, term, undertaking and compensation; County Law, §§ 230-233. Neglecting to make transcripts, or making false certificate; Penal Law, § 1874.

SURROGATES' COURTS.

Powers of and surrogates proceedings in surrogate's courts, Code Civ. Pro. §§ 2472-2771.

SURVEYOR.

Fees of, in action for partition of dower; Code Civ. Pro. § 3299.

SYPHON.

Defined; General Business Law, § 360-a.

SYRACUSE INSTITUTION FOR FEEBLE-MINDED CHILDREN.

See States Charities Law; §§ 60-70.

SYRINGES.

Sale of hypodermic, regulated; Penal Law, § 318-a.

TAXATION.

Of transient merchants; General Municipal Law, § 85-a.

L. 1911, ch. 470.—An act to validate warrants for the collection of taxes, generally, and legalize proceedings taken under such warrants.

§ 1. No warrant, heretofore annexed to the annual tax-rolls, by the board of supervisors of the respective counties of the state, for the collection of taxes, shall be held to be invalid or illegal, by reason of the omission to attach thereto the seal of such county, and all proceedings, including levy and sale, had thereunder, for the collection of such taxes, shall be construed and determined as though such seal was duly attached.

L. 1911, ch. 149. Taxation of state lands in Rockland county. § 1.

§ 2. This act shall take effect at once, but shall not affect any action or proceeding now pending in any court.

L. 1911, ch. 149.—An act providing for the assessment and taxation of lands owned by the state in the county of Rockland.

§ 1. All lands in the county of Rockland heretofore or hereafter acquired for a public use by the state of New York, as provided by law, shall be assessed and taxed in the towns where situated for state, county, town, village, school and highway purposes in the same manner as other real property owned by persons and individuals in such towns and villages. The assessed valuation of the lands so acquired shall not be reduced below the assessed valuation of such lands at the time they were acquired, until the bonds and other indebtedness of such towns and villages and the county of Rockland, outstanding at the time this act takes effect, shall be fully paid, nor shall the assessed valuation of such lands include the improvements, if any, erected thereon by the state. All lands which have heretofore been purchased by the state in the county of Rockland, subsequent to the assessment thereof in any year by the board of assessors of the town wherein such lands are situated, although prior to the levying of the taxes for that year upon such assessment, are hereby made subject to the lien of the taxes so levied, and all such taxes shall be paid by the state to the treasurer of the county of Rockland; and the provisions of section four hundred and forty of the education law, so far as the provisions of this act are not in conflict therewith, shall govern the assessment, levy and collection of school taxes on such state lands in said county.

L. 1913, ch. 656.—An act to declare and prescribe the effect of general statutes relating to taxation upon various local acts governing taxation in the county of Westchester and to legalize certain acts and proceedings heretofore taken in such county relating to taxation.

Omitted as local.

L. 1912, ch. 20.—An act to legalize the official acts of boards of supervisors in the year nineteen hundred and eleven, in equalizing the assessed valuations of real estate between the several tax districts in the county and also to legalize the levying and collection of taxes in said tax districts in accordance with such equalization.

Omitted as temporary.

L. 1912, ch. 64.—An act to legalize and confirm the tax levied for the repair of highways upon the assessment rolls of the several towns for the year nineteen hundred and eleven.

Omitted as temporary.

L. 1914, ch. 267.—An act authorizing the comptroller to revise and settle accounts paid under the provisions of section one hundred and eighty-seven of the tax law for the years ending December thirty-first, nineteen hundred and ten, and December thirty-first, nineteen hundred and eleven.

Omitted as temporary.

L. 1914, ch. 393.—An act authorizing and directing the comptroller to readjust and

§§ 1-3.

Convention of state representatives.

L. 1917, ch. 133.

resettle the accounts of certain trust companies for taxes paid under section one hundred and eighty-seven-a of the tax law, as amended by chapters one hundred and thirty-two and five hundred and thirty-five of the laws of nineteen hundred and one, for the years ending June thirtieth, nineteen hundred and one, nineteen hundred and two and nineteen hundred and three.

Omitted as temporary.

L. 1917, ch. 133.—An act to create a commission to represent the state at a congress of the representatives of the several states to consider the relations of the state and federal governments in respect of taxation.

§ 1. The governor is hereby authorized to appoint a commission of seven members to meet the representatives of the state of California and the representatives of such other states as may be in attendance thereat, in a congress or convention to consider the relations of the state and federal governments in respect of taxation, with the view of establishing a reasonable line of division between the sources of state taxation and the sources of federal taxation, eliminating thereby conflicts of jurisdiction between the state and federal governments, accomplishing economy in the levying and collection of taxes and relieving the growing dissatisfaction on the part of the taxpayers resulting from irritating and expensive duplication of accounts and reports and double taxation.

§ 2. Such commission shall choose a chairman from among its members, and shall confer with the representatives chosen from other states, and arrange for the time and place of holding such congress or convention. The members of such committee shall receive no compensation for their services, but shall be entitled to their actual traveling and hotel expenses.

§ 3. The sum of two thousand dollars (\$2,000) or so much thereof as may be needed is hereby appropriated for the purposes of this act, payable by the treasurer on the warrant of the comptroller on the order of the chairman of such commission.

TAXES.

Hindering officer in collection; Penal Law, § 1870. State comptroller, or his employees not to be interested in tax sale; Penal Law, § 1827. Making false statement in reference to; Penal Law, § 2321.

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